Unidel Oil Corporation
Union Oil Company of California
Vsea, Inc.
W.H. Hunt
Wainoco Oil and Gas Company
Weeks Exploration Company
Weeks Petroleum Corporation
Westover Oil Company
William Herbert Hunt Trust Estate
Willametta K. Day Trust
Williams Exploration Company
Zapata Exploration Company

In addition, Statements of Production have been received from twelve companies which provided a daily average of 1.6 million barrels or more of crude oil, natural gas and liquified petroleum products during the previous-mentioned production period and therefore are restricted from bidding jointly with each other during the bidding period of November 1, 1980, through April 30, 1981.

This list appeared in the Federal Register on Thursday, October 2, 1980, at 45 FR 65324. Also see amendments to 43 CFR 3316 published in the Federal Register, on Friday, October 17, 1980, at 45 FR 69174. The change will require only those companies which have a daily average of 1.6 million barrels or more of crude oil, natural gas and liquified petroleum products to file Statements of Production with the Bureau of Land Management in following bidding periods.

Ed Hastey
Associate Director, Bureau of Land Management

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BILLING CODE 4310-84-C

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Wednesday
December 24, 1980

Part VII

Department of the Interior

Office of the Secretary

Regulatory Flexibility Act; Interim Rule Implementing; Request for Comments

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 14

Interim Rule Implementing the Regulatory Flexibility Act; Request for Comments

AGENCY: Department of the Interior.

ACTION: Interim rule with request for comments.

SUMMARY: The Department of the Interior's rulemaking procedures are being revised to implement the Regulatory Flexibility Act (Pub. L. 96–354).

The Act requires Federal agencies to take into consideration and analyze the effects of their rules on small businesses, small organizations, and small governmental jurisdictions.

Those portions of the Department's procedures which are new or revised are highlighted by arrows in the text of the rule.

DATES: This rule is effective January 1, 1981. Comments must be received on or before February 9, 1981.

ADDRESSES: Written comments should be sent to: Chief, Division of Directives and Paperwork Management, Office of Information Resources Management, Room 7357, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jim Douglas, Office of Policy Analysis, 202–343–8501, Deborah Ryan, Office of the Solicitor, 202–343–5216.

SUPPLEMENTARY INFORMATION: On December 13, 1978 (43 FR 58295), a final rule was issued by the Secretary of the Interior to implement Executive Order 12044 (E.O. 12044), "Improving Government Regulations", in the Department of the Interior. The rule established a four part process for developing new rules or revising existing rules. Initially, all rules under development must be examined to determine whether the rules will, if promulgated, be "significant" under specific criteria. Rules found to be significant are subject to additional scrutiny to determine whether a regulatory analysis of the rule is necessary. Performing a regulatory analysis on the effects of major rules constitutes the second part of the process.

Significant rules must be developed in a specific manner which allows for public participation and review of alternatives. Significant rules must be approved by the Secretary, or by a Secretarial Officer authorized by the Secretary. Rules that are not significant do not require special development procedures.

Periodic review of existing rules to assure their continuing relevance, adequacy, and consistency with other related rules and policies constitutes the third part of the process. Finally, a semi-annual agenda of rules under development and review is published to provide public notice and information about rulemaking activity and review.

Regulatory Flexibility Act

On September 19, 1980, the President signed into law the Regulatory Flexibility Act (Pub. L. 96–354) which amends the Administrative Procedure Act (5 U.S.C. 101 *et seq.*) by adding a new Chapter 6, "The Analysis of Regulatory Functions." The purpose of the Regulatory Flexibility Act is to establish as a principle of rulemaking that, whenever possible, agencies will fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to the rule.

Because the provisions of the Act become effective on January 1, 1981 an interim rule is being published at this time. Good cause exists for waiver of the usual 30-day waiting period for effectiveness so that the procedures will be in effect on January 1.

Because these rules relate to agency practice and procedure, the Administrative Procedure Act does not require that they be subject to public notice and comment. Consistent with the Department's public participation policy and the spirit of the Regulatory Flexibility Act, however, public comments on the rule are invited. After consideration of public comments, and an evaluation of the efficiency of the interim rule, a final rule will be published.

Under the Regulatory Flexibility Act special attention is to be given to the effects of rules on small entities through the publication of agendas of rules, analysis of the anticipated effects of rules, public participation in the development of rules, and review of existing rules. At the onset of the rulemaking process a determination must be made as to whether the rule, if promulgated, will have a "significant economic effect on a substantial number of small entities." If it will have such an effect, an initial, and later a final, small entity flexibility analysis is required to assess the effects of the rule on small entities and to consider alternatives that are consistent with the objectives of the rule and applicable statutes, which fit the scale of affected small entities. In addition, the rulemaking process for rules determined to have a significant economic effect on a substantial number of small entitites must be tailored to accommodate and encourage participation by small entities.

Since the central elements of the Regulatory Flexibility Act are generally consistent with those of E.O. 12044, the Department of the Interior is revising its rules implementing the Executive Order to establish concurrent compliance with both authorities. The changes and revisions discussed below are largely additions to the existing rules to include the requirements of the Regulatory Flexibility Act. Part 14 has, however, been reorganized to incorporate in a clear and logical manner the requirements of the Act and the Executive Order.

Under the revised procedures the Department will continue to publish a semiannual agenda of rules under development and review, although the dates of publication are changed from January and July of each year to April and October. In addition, the content of agenda entries is expanded to incorporate the requirements of the Regulatory Flexibility Act. Periodic reviews of existing rules ("sunset reviews") will continue to be performed without change. The Department's five-year cycle is more stringent than required under the statute and is retained. However, the statutory requirement that reviews be completed within one year is adopted.

At the onset of each rulemaking procedure, the Secretary or Secretarial Officer will be required to make two distinct findings. First, the determination of significance under E.O. 12044; second, a determination of the effects on small entities. Since both determinations are based on similiar criteria and must be made at the initiation of the rulemaking process, it is expected that one document will be used in making both determinations. However, § 14.3(b)(2) clearly specifies that the determination of effect on small entities is a determination separate from and in addition to the determination of significance and that a "significant" rule does not necessarily have a significant economic effect on a substantial number of small entities, or *vice versa*.

The development process for "significant" or "other" rules is not changed by the revisions to Part 14. However, requirements are added for the development of rules determined to have a significant economic effect on a substantial number of small entities, regardless of their "significance."

Primarily, preparation of "small entity flexibility analyses" for such rules is required. Although the Regulatory

Flexibility Act uses the term "regulatory flexibility analyses," the term "small entity flexibility analyses" is used in this rule to avoid confusion with "regulatory analyses" required under E.O. 12044.

In addition to the preparation of such analyses, rules determined to have a significant economic effect on a substantial number of small entities must be developed in a manner that encourages and accommodates participation by small entities. Both the preparation of flexibility analyses and the participation of affected small entities are designed to maximize consideration of regulatory alternatives which lessen the burden on small businesses, small organizations and small governmental jurisdictions subject to regulation.

Section-by-Section Review

To assist the reader in understanding the revisions and additions to this Part, the following is a section-by-section review:

§ *14.1 Purpose and Scope:* This section has been revised to include the Regulatory Flexibility Act.

§ *14.2 Definition:* The definition of Secretarial Officer has been revised to include the Inspector General.

§ *14.3 Required determinations:* This section formerly discussed determinations of significance under E.O. 12044. It has been revised to discuss the two different determinations now required, approval authority, exceptions, and required statements in the **Federal Register**. Criteria for determinations of significance and needed regulatory analyses have been moved to § 14.4.

§ *14.4 Determination of significance and need for regulatory analysis:* This section contains the criteria for determination of significance under E.O. 12044 formerly found at § 14.3 (c) and (d). The criterion relating to reporting and recordkeeping has been revised to make it consistent with the Office of Management and Budget's proposed rules on controlling paperwork burdens on the public (45 FR 2586, January 11, 1980) and the Department's criteria for significant information collection.

§ *14.5 Determination of effect on small entities:* This is a new section implementing new 5 U.S.C. 605(b). Paragraph (a) defines "small business," "small organization," and "small governmental jurisdiction." The definitions of "small organization" and "small governmental jurisdiction" are those used in the Act. The definition of "small business" is drawn from the Small Business Act (15 U.S.C. 632), but an alternative is provided for rules promulgated under the Surface Mining Control and Reclamation Act (30 U.S.C. 1201 *et seq.*) because that Act specifies a definition of "small operator." Paragraph (b) of § 14.5 sets out guidance for interpreting the terms "significant economic effect" and "substantial number." This guidance is general in nature to permit it to be adapted to the diverse programs which the Department administers. It is expected that Secretarial Officers will resolve doubts about the applicability of the criteria in favor of conducting small entity flexibility analyses. Paragraph (c) permits agency heads to certify that a proposed or final rule will not have a significant economic effect on a substantial number of small entities, thus not requiring the preparation of small entity flexibility analyses.

§ *14.6 Development of significant rules:* This section, previously § 14.4, has been revised to specify additional procedural requirements necessary to assure consideration of the effects of rules on small entities and to assure participation in the rulemaking process by small entities. Paragraph § 14.4(d)(2), which described the content of regulatory analyses, has been moved to a new § 14.8.

§ *14.7 Development of other rules:* This section, previously § 14.5, has been revised to assure that rules determined not to be significant under E.O. 12044 are developed in a manner that considers effects on small entities and assures participation in the process by small entities.

§ *14.8 Content of regulatory analyses:* This section was previously found at § 14.4(d)(2). No substantive revisions have been made.

§ *14.9 Content of small entity flexibility analyses:* This is a new section implementing new 5 U.S.C. 603 and 604. It sets out minimum specifications for the type of information and analyses to be contained in initial and final small entity flexibility analyses.

§ *14.10 Petitions for Rulemaking:* This section is renumbered from § 14.6 without change.

§ *14.11 Review of rules:* This section, previously § 14.7, contains minor revisions to the review criteria in paragraph (c). A new paragraph (d)(2) has been added to require the completion of all reviews within one year. Reviews of rules that may affect small entities may be extended by a Secretarial Officer, as provided in new 5 U.S.C. 610(a).

§ *14.12 Semiannual Agenda:* This section, previously found at § 14.8, has been revised so that separate agendas will not be published under the Executive Order and the statute. The publication dates have been changed from January and July of each year to April and October, and additional information requirements have been added to paragraph (b)(3).

Request For Comments

As discussed above, this rule does not substantively alter the Department's procedures for complying with E.O. 12044. Consequently, public comments are requested on those portions of the rule which implement the Regulatory Flexibility Act. New and revised portions of the procedures are highlighted with arrows. In particular, comments are requested on the following issues:

1. Definitions of small business, small organization, and small governmental jurisdiction. (§ 14.5(a))

2. Criteria for determining "significant economic effect" and "substantial number," including any criteria indicative of significant economic effects on small organizations and small governmental jurisdictions. (§ 14.5(b))

Drafting Information

The primary authors of this document are: Jim Douglas, Office of Policy Analysis (343–8501); Lois W. Paull, Office of Information Resources Management (343–6191); Deborah Ryan, Office of the Solicitor (343–5216); and John D. Trezise, Office of the Solicitor (343–5216). Assistance was provided by the Department's Office of Small and Disadvantaged Business Utilization.

Statement of Significance

The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Larry E. Meierotto,

Assistant Secretary—Policy, Budget and Administration.

December 18, 1980.

(In the following text ►◄ indicates new or revised material)

43 CFR Part 14 is revised as follows:

PART 14—RULEMAKING

Sec.

Sec.
14.10 Petitions for rulemaking.
14.11 Review of rules.
14.12 Semiannual agenda.

Authority: E.O. 12044, 43 FR 12661, March 24, 1978; Pub. L. 96–354, 94 Stat. 1164 (5 U.S.C. 601) September 19, 1980.

§ 14.1 Purpose and scope.

(a) *Purpose.* This part contains the policies and procedures of the Department of the Interior for adoption of rules. These policies and procedures incorporate the requirements of the Administrative Procedure Act, Executive Order 12044, "Improving Government Regulations" (March 23, 1978) and the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980).

(b) *Scope.* The principal sections of this part deal with procedures for determining the significance of rules (§ 14.4); procedures for determining the effect of rules on small entities (§ 14.5); procedures for development of "significant" rules and preparation of regulatory analyses (§ 14.6); procedures for development of other rules (§ 14.7); the method by which members of the public may petition for rulemaking (§ 14.10); and procedures for periodic review of existing rules (§ 14.11).

(c) *Applicability of part.* The procedures contained in this part are applicable to all rules for which a notice of proposed rulemaking is issued, or which are published as final rules without a notice of proposed rulemaking, on or after January 1, 1981. For the procedures applicable to rules for which a notice of proposed rulemaking was issued before January 1, 1981, see 43 CFR Part 14 (1979) (source: 43 FR 58292, December 13, 1978; 44 FR 23086, April 18, 1979).

(d) *Exceptions.* (1) The policies and procedures of this part do not apply to:

(i) Rules which are required by statute to be made on the record after an opportunity for a formal hearing under the procedures for such hearings contained in 5 U.S.C. 556 and 557;

(ii) Rules involving a foreign or military affairs function of the United States; and

(iii) Rules related to agency management or personnel.

(2) Further, for the purposes of § 14.5 (*Determination of effect on small entities*) and § 14.9 (*Content of small entity flexibility analyses*) only, the term "rule" does not include a rule of particular applicability relating to: (i) Rates, wages, corporate or financial structures or reorganizations; (ii) Prices, facilities, appliances, services, or allowances therefor; or (iii) Valuations, costs or accounting, or practices bearing on any of the foregoing. (Pub. L. 96–354, 601(2)) ◄

§ 14.2 Definitions.

(a) *Secretary.* "Secretary" means the Secretary of the Interior.

(b) *Secretarial Officer.* "Secretarial Officers" are the Under Secretary, the Solicitor, the Inspector General, and the Assistant Secretaries.

(c) *Bureau.* "Bureau" refers to all bureaus and offices of the Department of the Interior, including the Office of the Secretary and the Other Departmental Offices.

(d) *Lead Official.* "Lead official" means the official assigned responsibility for developing a rule. The designation of a lead official is the initial responsibility of the bureau developing the rule, but may be reviewed by the Secretarial Officer having jurisdiction over the bureau.

(e) *Rule.* "Rule" means a statement of general or particular applicability and future effect which implements, interprets or prescribes law or policy or describes the organization, procedure or practice requirements of the Department. (5 U.S.C. 551(4))

► **§ 14.3 Required determinations.**

(a) *Significance.* (1) Before developing a new rule or amending an existing rule, the lead official must determine whether the rule or amendment will be a significant rule. (See § 14.4 *Determination of significance and need for regulatory analysis* for criteria) This determination must be in writing, state whether or not the rule is significant, and briefly describe the basis of the determination.

(2) If a rule is determined to be significant, the bureau developing or amending the rule will follow the procedures described in § 14.6 *(Development of significant rules).* If a rule is determined not to be significant, the bureau will follow the procedures described in §14.7 *(Development of other rules).* ◄

(3) If a rule is determined to be significant, the lead official must also determine whether a regulatory analysis of the economic consequences of a rule is required. This decision should ordinarily be made at the same time as the determination of significance. (See § 14.4 *Determination of significance and need for regulatory analysis* and § 14.6 *Development of significant rules.*) In some cases, the need to collect additional economic information may necessitate postponement of the decision. In these cases, a decision on preparation of a regulatory analysis should be made no later than the beginning of the drafting of the proposed rule.

►(b) *Effect on small entities.* (1) Before developing a new rule or amending an existing rule, the lead official also must determine whether the rule will have a significant economic effect on a substantial number of small entities. (See § 14.5 *Determination of effect on small entities* for criteria.) This determination must be in writing, state whether or not the rule will have a significant economic effect on a substantial number of small entities, and briefly decribe the basis of the determination.

(2) The determination of effect on small entities is a determination separate from and in addition to the determination of significance. That is, a rule may or may not be determined to be "significant" and still have a significant economic effect on a substantial number of small entities. If a rule is determined to have such an effect, the bureau developing or amending the rule will prepare small entity flexibility analyses for the rule (see § 14.9 *Content of small entity flexibility analyses*) in addition to and in conjunction with meeting the requirements for the developing of significant rules (§ 14.6) or for the development of other rules (§ 14.7).

(3) The determination of effect on small entities should ordinarily be made at the same time as the determination of significance. (See §§ 14.4 and 14.7) In some cases, the need to collect additional information may necessitate postponement of the decision. In these cases, the determination of effect on small entities should be made no later than the beginning of the drafting of the proposed rule.

(c) *Approval.* The determination of whether or not a rule is significant, the decision on whether preparation of a regulatory analysis is required, and the determination of effect on small entities must be approved by the Secretarial Officer having jurisdiction over the program to which the rule relates. Secretarial Officers may delegate approval responsibility for particular types or classes of rules to bureau heads. Bureau heads may not redelegate this approval authority.

(d) *Discretionary use of procedures.* The Secretary or the Secretarial Officer having jurisdiction over the program to which a rule relates may require that:

(1) The rule be developed as a significant rule or a regulatory analysis be prepared, or both, even though the rule does not meet the criteria for significance or preparation of a regulatory analysis, or

(2) A small entity flexibility analysis be prepared for the rule even though the rule does not have a significant economic effect on a substantial number of small entities.

(e) *Exceptions.* (1) In certain circumstances the procedures for development of significant rules and preparation of regulatory analyses may be waived. (See paragraph (c) under §14.4 *Determination of significance and need for regulatory analysis*)

(2) In certain limited circumstances, the preparation of small entity flexibility analyses may be waived or delayed. (See paragraph (d) under §14.5 (*Determination of effects on small entities*)

(f) *Statements in* **Federal Register.** (1) All final and proposed rulemaking documents and notices of intent to proposed rules published in the **Federal Register** will state in the Supplementary Information Section: (i) Whether or not the rule is a significant rule. If the rule is significant, the document will state (A) why the rule is significant and (B) whether or not a regulatory analysis is required; and

(ii) Whether or not the rule will have a significant economic effect on a substantial number of small entities.

(A) If the rule will not have a significant economic effect on a substantial number of small entities the Supplementary Information section will contain a certification that this is the case and will include a statement explaining the basis for the certification.

(B) If a small entity flexibility analysis is required, the initial analysis or a summary will be published with the proposed rule in the **Federal Register.** In those instances where a summary only is published, a statement describing where copies may be obtained will also be included. A statement describing where copies of a final small entity flexibility analysis may be obtained will be published with the final rule.

(2) If the decision on the need for a regulatory analysis or on whether the rule will have a significant economic effect on a substantial number of small entities has not been made at the time of a notice of intent to propose the rule, the notice of intent will invite comments on the need for a regulatory analysis and on effects of the rule on small entities.◄

§ 14.4 Determination of significance and need for regulatory analysis.

(a) *Criteria for significance.* A rule is "significant" if it falls within one or more of the following categories:

(1) Rules which have a significant and nation or regionwide impact on state or local governments. Factors to be considered in determining whether the impact of a rule will be significant include its effect on: (i) Interstate relations; (ii) relations between state and local governments; (iii) internal organization of state and local governments; (iv) personnel practices of state and local governments; (v) planning and fiscal activities of state and local governments; (vi) the role and functions of heads of state and local governments; and (vii) eligibility criteria for Federal financial assistance.

►(2) Rules which will result in significant new information collection or recordkeeping requirements that will affect individuals, businesses, organizations, or state or local governments. Factors that determine whether information collection or recordkeeping requirements are significant are those which: (i) will have a national or regionwide economic impact, or substantial effect on state or local governments or small entities; (ii) will result in the commitment of resources and/or federal funds exceeding $250,000; (iii) require a respondent to spend more than one-hour to respond to each information requirement; (iv) impose a total annual reporting burden on the public exceeding 100,000 hours; or (v) require more than 200,000 persons to respond or maintain specific records.◄

(3) Rules which both involve a potential conflict between environmental and other considerations and constitute a major Federal action for which an environmental impact statement is required by section 102(2)(c) of the National Environmental Policy Act of 1969. (42 U.S.C. 4332(2)(c))

(4) Rules which have a major impact on other programs of the Department, other Federal agencies or the allocation of Federal funds.

(5) Rules which are likely to have a substantial economic effect on the entire economy or on an individual region, industry or level of government.

(b) *Criteria for regulatory analysis.* (1) A regulatory analysis of the economic consequences of a rule will be prepared if the rule is within category (5) of the criteria for significance and (i) the rule will have an annual economic effect of $100 million or more or (ii) even though the economic effect of the rule will be less than $100 million, the potential economic effect of the rule on the economy or an individual region, industry or level of government is sufficiently major as to require formal analysis to assure that the objectives of the rule are achieved with minimum burden.

(2)(i) In determining whether a regulatory analysis should be prepared for rules which will have an economic effect of less than $100 million, close attention should be given to such factors as: (A) The present average level of real income of the region which may be affected and the potential change in average income for the region as a result of the rules; (B) the present cost of doing business of an industry and the potential effect of the rules on the cost; (C) the present cost of operating a level of government or a particular governmental program and the potential effect of the rules on that cost; and (D) the estimated likelihood that the acceptable alternative which would impose the minimum economic burden would not be clearly chosen without formal regulatory analysis.

(ii) No specific quantitative levels or percentages are established for examining rules which will have an economic effect of less than $100 million, because the relative effect of such rules may be minor for some regions, industries, or levels of government, but major or critical for others. Thus each case needs to be examined individually. For example, a particular method of regulation might cause a very small increase in the cost of doing business for an industry. If, however, there are a number of firms in that industry which are marginal, a small increase in costs could drive these firms out of business. In such a case, a regulatory analysis should be prepared if the least burdensome method of regulation is not obvious without formal analysis.

(3)(i) "Economic effects" means changes in the use of resources which, in principle, would affect national income and which can be valued in dollar terms. For purposes of determining the necessity for regulatory analysis, economic effects do not include measures of consumers' willingness to pay in cases when monetary values would have to be imputed. If a regulatory analysis is determined to be necessary, however, measurement of consumers' willingness to pay which would have to be imputed, would be measured or estimated when such datum was of significance to the regulatory decision at hand, and such measurement was practical.

(ii) A "region" is a geographic area ordinarily covering more than one state, although for some rules a narrower interpretation may be appropriate. For example, a particular proposed rule might affect only one state, but the area affected could be as large or the impact as great, as other rules significantly affecting a region comprising more than one state. Under such a circumstance, the same consideration for determining the need for regulatory analysis should be given as if the region comprised more than one state.

(iii) An "industry" is defined to correspond to a 4-digit industry within the Standard Industrial Classification

System established by the Office of Management and Budget (OMB, *Standard Industrial Classification Manual* (1972)).

(c) *Exceptions.* The Secretary or the Secretarial Officer having jurisdiction over the program to which a rule relates may except from the procedures for development of significant rules and preparation of regulatory analyses rules (1) issued in response to an emergency or which are governed by short-term statutory or judicial deadlines, or (2) which related to Federal Government procurement. The Supplementary Information section of **Federal Register** documents for rules for which such exceptions are made will contain an explanation of why it is impractical or contrary to the public interest for the Department to follow the procedures for development of significant rules.

►§14.5 Determination of effects on small entities.

(a) *Definitions.* (1) "Small business" means any business which is independently owned and operated and which is not dominant in its field of operation. In making specific determinations about the effects of rules on small businesses, bureaus should consider the standards and criteria contained in the Small Business Administration rules appearing in 13 CFR Part 121. For rules promulgated under the authority of the Surface Mining Control and Reclamamtion Act of 1977 (30 U.S.C. 1201 *et seq.)* a coal operator is a small business if its total annual producition of coal from surface and underground mining operations does not exceed one hundred thousand tons (30 U.S.C. 1252(c)).

(2) "Small organization" means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

(3) "Small governmental jurisdiction" means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.

(4)"Small entity" means "small business", "small organiztion" and "small governmental jurisdiction."

(b) *Criteria for determining effects on small entities.* (1) "Significant economic effect" includes a wide variety of quantifiable as well as non-quantifiable aspects. For example, every small entity does not have to be affected significantly for the total effect to be significant, costs which are not easily quantifiable must be considered, and both the marginal and cumulative effects should be estimated whenever possible.

(2) "Substantial number" means a substantial number of entities within one, or a combination, of the three subgroups, small businesses, small organizations, or small governmental jurisdictions. Whether a substantial number are affected must be determined under the circumstances of each rule, but it is not necessary for an overwhelming precentage of potential entities in a subgroup, or combination of subgroups, to be affected for the rule under development to meet the "substantial number" test. In addition, though a rule may not affect a substantial number of small entities overall, it may affect a substantial number within an industry or sector. Such a rule will, therefore, affect a substantial number of small entities.

(3) In determining whether a rule will have a significant economic effect on a substantial number of small entities, the Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may consider the following:

(i) Demographic effects (firms affected per industry, industries affected, anticipated closings, geographic distribution);

(ii) Direct costs by size of affected entities, both total and per unit of output (operating costs, capital costs, administrative costs);

(iii) Indirect costs;

(iv) Non-quantifiable effects;

(v) Enforcement costs (Federal, state, local);

(vi) Competitive effects (concentration, mergers, entry, exports-imports);

(vii) Aggregate effects (employment, output, price levels, growth rates).

(c) *Certification of no significant economic effect.* (1) The Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may certify that the rule will not, if promulgated, have a significant economic effect on a substantial number of small entities. (2) If the rule will not have a significant economic effect on a substantial number of small entities, the Supplementary Information section of all final and proposed rulemaking documents and notices of intent to propose rules in the **Federal Register** will contain a certification that this is the case and will include a statement explaining the basis for the certification.

(d) *Waiver or delay.* (1) The Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may waive or delay the completion of some or all of the requirements for the preparation of an initial small entity flexibility analysis by publishing in the **Federal Register** a written finding that the rule is being promulgated in final form in response to an emergency that makes compliance or timely compliance with the requirements of an initial small entity flexibility analysis impracticable. The finding will be published no later than the date of publication of the final rule, and will contain the reasons for the finding.

(2) The Secretary or Secretarial Officer having jurisdiction over the program to which the rule relates may delay the completion of a final small entity flexibility analysis by publishing in the **Federal Register** a written finding that the rule is being promulgated in final form in response to an emergency that makes timely compliance with the requirements of a final small entity flexibility analysis impracticable. The finding will be published no later than the date of publication of the final rule, and will contain the reasons for the finding.

(3) If the bureau has not prepared a required final small entity flexibility analysis within 180 days of publication of the final rules, the rule will lapse and have no effect. The rule will not be repromulgated until a final small entity flexibility analysis has been completed by the bureau.◄

§ 14.6 Development of significant rules.

(a) *Scope.* This section outlines the procedures for developing significant rules, including procedures to involve the public in the development process.

(b) *Work Plan.* (1) When a rule has been determined to be significant, the lead official will promptly prepare a work plan for review and approval by the Secretary.

(2) The work plan will state the need for development of the rule, the principal issues and alternative approaches to be considered, a tentative plan for public involvement, and target dates for completion of steps in its development. The plan will also state whether or not a regulatory analysis will be prepared or, if this determination has not been made, the process by which the determination will be made. ►If appropriate, the plan will include tentative dates for completion of initial and final small entity flexibility analyses and specific actions planned to include and accommodate interested small entities in the development of the rule.◄

(3) The plan will be submitted to the Secretary through the Secretarial Officer having jurisdiction over the program to which the rule relates and the Assistant Secretary—Policy, Budget and Administration. The Assistant Secretar—Policy, Budget and Administration must review and

approve the decision on whether a regulatory analysis is necessary during the review of the work plan.

(4) After review of the plan, the Secretary will approve or disapprove the plan. The Secretary's approval may be conditioned on modifications in the plan.

(5) When the Secretary approves a work plan, he will indicate whether he wishes to approve the rule before it is published in the **Federal Register** as a proposed and final rule or whether the approval authority may be exercised by the Secretarial Officer having jurisdiction over the program to which the rule relates.

(c) *Early public involvement.* (1) Before a proposed significant rule is drafted, a notice of intent to propose rulemaking will be published in the **Federal Register.** The notice of intent may be omitted, however, if time constraints require immediate preparation of a proposed rule or if there has been a recent previous opportunity for comment by the general public on the issues to be addressed in the proposed rule.

(2) A notice of intent will state the need for, the subject matter of and key issues presented by the anticipated rulemaking, and will advise the public where additional information may be obtained and where comments should be sent. If a regulatory analysis ►or a small entity flexibility analysis is to be prepared,◄ the notice should invite comment of the economic consequences of alternative regulatory approaches ►and suggestions for minimizing the economic effects on small entities.◄ If no decision on a regulatory analysis ►or a small entity flexibility analysis has◄ been made, the notice of intent should invite comment on whether the potential economic consequences of the rule require preparation of a regulatory analysis ►or a small entity flexibility analysis.◄

(3) When a notice of intent to propose rulemaking is to be published, consideration will be given to taking additional actions to assure meaningful public participation in the rulemaking process. These additional actions may include, but are not limited to: (i) Holding open conferences or public hearings; (ii) sending press releases to newspapers of general circulation and other publications likely to be read by those affected; (iii) directly notifying interested parties, including state and local governments ►and small entities;◄ and (iv) taking out paid advertisements in publications likely to be read by those affected. If the rule may have a significant economic effect on a substantial number of small entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in the rulemaking by small entities.

(d) *Regulatory analysis.* (1) If a regulatory analysis is required, the draft regulatory analysis will ordinarily be prepared after the receipt of public comments in response to the notice of intent to propose rulemaking (if one is published), but before or during the process of drafting the proposed rule. The final regulatory analysis will be prepared after the comment period of the proposed rules and draft regulatory analysis. The lead official will be responsible for assuring that the preparation of the draft and final regulatory analyses is integrated with the preparation of the proposed and final rules.

►(2) If appropriate and desirable, the draft and final regulatory analyses may also include information and analysis necessary to fulfill requirements to conduct initial and final small entity flexibility analyses. If the regulatory analysis and small entity flexibility analyses are combined, the document will clearly state that such a procedure is being followed.◄

(e) *Preparation of proposed and final significant rules.* (1) In supervising the preparation of proposed and final rules, the lead official is responsible for assuring at a minimum that: (i) The direct and indirect effects of the rule are adequately considered; (ii) alternative approaches are considered and the least burdensome of acceptable alternatives is chosen; (iii) public comments are considered and the final rulemaking document states the reason for accepting or rejecting these comments or groups of comments; (iv) the rule is written in clear English and will be understandable to those who must comply with it; and (v) new ►information collection◄ or recordkeeping requirements which may result from the rule are considered and conform to the requirements of the Federal Reports Act.

(2) When the final rule is prepared, the lead official is also responsible for developing a plan for evaluating the rule after its issuance. The plan should take into account the review cycle for review of rules in § 14.11.

(f) *Approval of proposed significant rules.* Notices of proposed significant rulemaking will be approved by the Secretary, or if the Secretary has so authorized, by the Secretarial Officer having jurisdiction over the program to which the rule relates. Prior to submission for approval, notices of proposed rulemaking will be reviewed by the Assistant Secretary—Policy, Budget and Administration and the Solicitor.

(g) *Publication of proposed significant rules.* (1) The public will be given a minimum of 60 calendar days after the date of publication in the **Federal Register** to comment on proposed significant rules. A shorter period may be used only in special cases requiring more timely action. In such cases, the notice of proposed rulemaking will contain a statement of the reason for the shorter period.

(2) A notice of proposed rulemaking will contain a statement of the alternative approaches considered in drafting the proposed rule and explanation of the basis for selection of the alternative incorporated in the proposal. (i) If a draft regulatory analysis has been prepared, the notice of proposed rulemaking will state how copies may be obtained and will ask for comments on the analysis. ►(ii) If an initial small entity flexibility analysis was prepared, the initial analysis or summary will be published in the **Federal Register** and will ask for comments on the analysis. If a summary only is published, a statement describing where copies may be obtained will also be included.◄

(3) To assure meaningful public comment on a proposed rule, consideration will be given to supplementing the **Federal Register** notice by taking additional actions. These additional actions may include, but are not limited to: (i) Open conferences and public hearings; (ii) sending press releases to newspapers of general circulation and other publications likely to be read by those affected; (iii) directly notifying interested parties, including state and local governments ►and small entities◄ and (iv) taking out paid advertisements in publications likely to be read by those affected. ►If the rule may have a significant economic effect on a substantial number of small entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in the rulemaking by small entities.◄

(h) *Approval of final significant rules.* (1) Final significant rules will be approved by the Secretary or, if the Secretary has so authorized, by the Secretarial Officer having jurisdiction over the program to which the rule relates. Prior to submission for this approval, final rules will be reviewed by

the Assistant Secretary—Policy, Budget, and Administration and the Solicitor.

(2) Before approving a final significant rule, the Secretary or Secretarial Officer should determine that: (i) The rule is needed; (ii) the direct and indirect effects of the rule have been adequately considered; (iii) alternative approaches have been considered and the least burdensome of the acceptable alternatives has been chosen; (iv) public comments have been considered and an adequate discussion of the comments is contained in the rulemaking document; (v) the rule is written in clear English and can be understood by those who must comply with it; (vi) an estimate has been made of the new ►information collection◄ or recordkeeping requirements necessary for compliance with the rule; (vii) the name, address and telephone number of a knowledgeable agency official is included in the document; (viii) the name of the principal author of the rule is included in the document; (ix) a plan has been developed for evaluating the rule after its issuance; and (x) the final regulatory analysis, ►or final small entity flexibility analysis,◄ if one has been prepared, adequately considers the economic consequences of the final rule.

(3) To assist the Secretary or Secretarial Officer in reviewing final significant rules, each rule must be accompanied by a memorandum: (i) Addressing each of the items listed above; (ii) analyzing the views of public, citizens groups, user groups and elected officials; and (iii) summarizing the anticipated impact of the rule. A copy of the regulatory analysis ►or final small entity flexibility analysis◄ will be attached to this memorandum.

(i) *Publication of final significant rules.* (1) The Supplementary Information section of a rulemaking document must contain a concise statement of the basis and purpose of the rule and must also discuss the reasons for accepting or rejecting all relevant and significant comments or groups of comments on the proposed rule.

(2) The rulemaking document must include a clear statement of the date on which the rule will take effect. This date will be a minimum of 30 calendar days after the date of publication in the **Federal Register** unless (i) the rule grants or recognizes an exemption or relieves a restriction or (ii) other good cause for a shorter delay of the effective date exists. If a rule is to become effective less than 30 days from the date of publication, the reason for the earlier date will be explained in the Supplementary Information Section.

(3) If a final regulatory analysis ►or a final small entity flexibility analysis◄ was prepared, the document will state where copies may be obtained.

§ 14.7 Development of other rules.

(a) *Scope.* Although a rule does not meet the criteria for significance, public participation in its development will often be helpful, ►especially when the rule may have a significant economic effect on a substantial number of small entities.◄ This section contains supplementary Department of the Interior policies for public participation in the development of rules not meeting the criteria for significance.

(b) *Legislative Rules.* (1) *Definition.* "Legislative Rules" are rules, other than rules of agency organization, procedure or practice, which are issued under statutory authority and which implement the statute.

(2) *Notice of intent to propose rules.* (i) If proposed legislative rules are likely to be complex or controversial or to reflect major changes in existing rules, an opportunity for public comment before the publication of a notice of proposed rulemaking may be helpful in drafting the proposed rules. Before drafting such proposed legislative rules, the lead official should consider whether publication in the **Federal Register** of a notice of intent to propose rulemaking will be beneficial in the drafting process.

(ii) A notice of intent will state the need for the rule, the subject matter of and the key issues presented by the anticipated rulemaking, and will advise the public where additional information may be obtained and where comments may be sent.

(3) *Proposed rulemaking.* (i) *Administrative Procedure Act Requirement.* Section 4 of the Administrative Procedure Act, requires that the public be allowed an opportunity to comment on proposed legislative rules before final adoption. (5 U.S.C. 553) This requirement for comment does not apply to rules which deal with public property, loans, grants, benefits or contracts. (5 U.S.C. 553(a)) Further, the requirement for comment, if otherwise applicable, may be waived if it is found, for good cause, that notice of and public comment on a proposed legislative rule are impracticable, unnecessary or contrary to the public interest. (5 U.S.C. 553(b)(B))

(ii) *Department policy.* (A) It is the policy of the Department not to invoke the exception to notice and comment procedures for legislative rules relating to public property, loans, grants, benefits or contracts. When legislative rules fall in these categories, an opportunity for comment will be given unless notice and comment are determined to be impracticable, unnecessary or contrary to the public interest.

(B) Dispensing with the publication of a notice of proposed legislative rulemaking on the ground that notice and an opportunity for comment are impracticable, unnecessary or contrary to the public interest is not favored and should occur only in special cases, such as emergencies or instances where a proposed amendment makes only minor technical changes in a rule.

(iii) *Statement of basis for omitting notice and comment.* When it is determined that a final legislative rule is to be adopted without prior publication of a notice of proposed rulemaking, a specific statement of the basis for the determination will be published with the rule.

(iv) *Period for comment.* No specific time period for comment is prescribed by the Administrative Procedure Act. Except where another statute requires a longer notice period, the public will be given a minimum of 30 calendar days to comment on legislative rules. A shorter period may be used only in special cases requiring more timely action. In such cases, the notice of proposed rulemaking will contain a statement of the reasons for the shorter period.

(4) *Assuring public participation.* When a notice of intent to propose a rule or a notice of proposed rulemaking is to be published, the lead official will consider taking additional actions to assure meaningful public participation in the rulemaking process. These additional actions may include, but are not limited to: (i) Holding open conferences or public hearings; (ii) sending press releases to newspapers of general circulation and other publications likely to be read by those affected; (iii) directly notifying interested parties, including state and local governments, ►and small entities;◄ and (iv) taking paid advertisements in publications likely to be read by those affected. ►If the rule may have a significant economic effect on a substantial number of small entities, special care will be taken to involve and accommodate interested small entities. For example, procedures for soliciting public comment on a rule may be adopted or modified to reduce the cost or complexity of participation in the rulemaking by small entities.◄

(5) *Final rulemaking documents.* (i) The Supplementary Information section of the rulemaking document for all final legislative rules must contain a concise statement of the basis and purpose for the rule and must also discuss all

relevant and significant comments on the proposed rule.

(ii) The rulemaking document must include a clear statement of the date on which the rule is to take effect. This date will be a minimum of 30 calendar days after the date of publication in the Federal Register unless: (A) The rule grants or recognizes an exemption or relieves a restriction or (B) other good cause for a shorter delay of the effective date exists. If a rule is to become effective less than 30 days from the date of publication, the reason for the earlier date will be explained in the Supplementary Information section.

(c) *Interpretative rules and general statements of policy.* (1) *Definitions.* (i) "Interpretative rules" are rules issued by the Department to advise the public of the Departments interpretation of the statutes and rules which it administers.

(ii) "General Statements of Policy" are statements issued by the Department to advise the public prospectively of the manner in which the Department proposes to administer a discretionary power.

(2) *Public participation.* The Administrative Procedure Act does not require public participation in the development of interpretative rules and general statements of policy. The lead official should, however, consider whether public participation in the development process will be beneficial. Factors which should be considered in making this decision include the impact of the rule or policy on the public or on state and local governments; the complexity and pervasiveness of the rule or policy; the degree to which the rule or policy will modify existing interpretations or policies; the confusion or controversy likely to be caused by practical difficulties of compliance with a new rule or policy; ►and the likely effect on small entities.◄

(3) *Procedures for public participation.* When it is determined that there should be an opportunity for public participation in the development of an interpretative rule or general statement of policy, the notice and comment rulemaking procedures of 5 U.S.C. 553 (b) and (c) and the procedures for development of legislative rules in § 14.7(b)(3)(iv) and § 14.7(b)(4) will be used.

(4) *Effective Date.* Final interpretative rules and general statements of policy may be made effective on the date of publication in the Federal Register. Except in emergency situations, consideration should, however, be given to delaying the effective date for 30 calendar days from the date of publication if (i) the adoption of the rule or statement was not preceded by an opportunity for comment or (ii) the rule or statement substantially modifies an earlier interpretation or policy on which members of the public or state or local governments have relied.

(5) *Codification.* Interpretative rules and general statements of policy should be codified in the Code of Federal Regulations if they have a substantial impact on, or are of continuing interest to, the public, state or local governments ►or small entities.◄

(d) *Rules of Agency organization, procedure and practice.* (1) *Definition.* "Rules of organization, procedure and practice" are: (i) descriptions of the Department's central and field organization and the method by which the public may obtain information, make submittals or requests, or obtain decisions; (ii) statements of the general course and method by which the Department's functions are channeled and determined, including the nature and requirements of all formal and informal procedures available; and (iii) rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports or examinations.

(2) *Public participation.* The Administrative Procedure Act does not require public participation in the development of rules of agency organization, procedure and practice. The lead official should, however, consider whether initial publication of a proposed rule in the Federal Register will contribute to the process of developing the rule, ►and in determining what effect the rule will have on small entities.◄

(3) *Procedures for Public Participation.* When it is determined that there should be an opportunity for public comment on a proposed rule of organization, procedure or practice, the notice and comment rulemaking procedures of 5 U.S.C. 553 (b) and (c) and the procedures for development of legislative rules in § 14.7(b)(3)(iv) and § 14.7(b)(4) will be used.

(4) *Effective Date.* Final rules of organization, procedure and practice may be made effective on the date of publication in the Federal Register. Except in emergency situations, consideration should, however, be given to delaying the effective date for 30 calendar days from the date of publication (i) if the adoption of the rule or statement was not preceded by an opportunity for comment or (ii) if the rule substantially modifies an earlier procedure or practice.

§ 14.8 Content of regulatory analyses.

A regulatory analysis prepared in accordance with § 14.4(b) (*Criteria for regulatory analysis*) will contain: (a) a succinct statement of the problem being addressed and objectives of the rule; (b) a description of the major alternative ways of achieving the objectives that were considered by the bureau; (c) an analysis of the economic consequences of each of the alternatives, and (d) a detailed explanation of the reasons for choosing one alternative over the others.

►§ 14.9 Content of small entity flexibility analyses.

(a) *Scope.* (1) This section outlines the content of small entity flexibility analyses for rules that have been determined to have a significant economic effect on a substantial number of small entities (§ 14.5).

(2) For the purpose of preparing an initial or final small entity flexibility analysis the bureau may also consider a series of closely related rules as one rule.

(b) *Initial small entity flexibility analysis.* (1) Each initial small entity flexibility analysis will contain:

(i) A description of the reasons why action by the bureau is being considered;

(ii) A succinct statement of the objectives of and legal basis for the rule;

(iii) A description of and where feasible, an estimate of the number of small entities affected by the rule;

(iv) A description of the projected information collection, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities subject to the requirements and the type of professional skills necessary for preparation of the information and records; and

(v) An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

(2) Each small entity flexibility analysis will also describe any significant alternatives to the rule which would accomplish the stated objectives of applicable statutes and minimize any significant economic effect of the rule on small entities. Alternatives available include but are not limited to:

(i) The establishment of differing compliance or information collection requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation or simplification of compliance or information collection requirements for small entities; (iii) the use of performance rather than design based standards; and (iv) an exemption

from coverage of the rule or any part of the rule for small entities.

(c) *Final small entity flexibility analysis.* Each final small entity flexibility analysis shall contain—

(1) A succinct statement of the need for and objectives of the rule;

(2) A summary of the issues raised by the public comments in response to the initial small entity flexibility analysis, a summary of the Department's assessment of such issues, and a statement of any changes made in the rule as a result of the public comments; and

(3) A description of each of the significant alternatives to the rules considered by the bureau which were consistent with the stated objectives of applicable statutes and designed to minimize the significant impact of the rule on small entities, and a statement of the reasons why each alternative was rejected.

(d) *Preparation of analysis.* In preparing an initial or final small entity flexibility analysis, the bureau may provide either a quantifiable or numerical description of the effects of the rule or alternatives to the rule or, if quantification is not practicable or reliable, more general descriptive statements.

(e) *Combination with regulatory analysis.* Initial or final small entity flexibility analyses may be prepared in conjunction with regulatory analyses for certain significant rules (see § 14.6 *Development of significant rules).* The document must clearly state that the two types of analyses are combined and it must satisfy all the content requirements for a regulatory analysis (see § 14.8) as well as the content requirements for a small entity flexibility analysis.◄

14.10 Petitions for rulemaking.

(a) *Scope.* This section prescribes procedures for the filing and consideration of petitions for rulemaking.

(b) *Filing of petitions.* Under the Administrative Procedure Act, any person may petition for the issuance, amendment, or repeal or a rule. (5 U.S.C. 553(e)) The petition will be addressed to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240. It will identify the rule requested to be repealed or provide the text of a proposed rule or amendment and include reasons in support of the petition.

(c) *Consideration of petitions.* The petition will be given prompt consideration and the petitioner will be notified promptly of action taken.

(d) *Publication of petitions.* A petition for rulemaking may be published in the **Federal Register** if the official responsible for acting on the petition determines that public comment may aid in consideration of the petition.

§ 14.11 Review of rules.

(a) *Scope.* This section establishes procedures for periodic review of existing rules to assure that they are needed, up-to-date and clear.

(b) *Responsibility.* Each bureau is responsible for reviewing existing rules which relate to programs which it administers. Secretarial Officers are responsible for assuring that bureau reviews are conducted and must approve the results of the reviews.

(c) *Review criteria.* In reviewing an existing rule, bureaus must consider: (1) The continued need for the rule; (2) the ►nature,◄ type and number of complaints or suggestions received concerning the rule; (3) whether the rule can be simplified or clarified; (4) the need to eliminate ►rules that overlap, duplicate or conflict with other Federal and, to the extent feasible, with state and local governmental rules;◄ (5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions or other factors have changed in the area affected by the rule; (6) the recordkeeping and ►information collection requirements◄ which the rule imposes on the public; and (7) the need to eliminate sex-based criteria and gender-specific terminology.

(d) *Review cycle.* (1) Rules will be reviewed at no less than five year intervals. More frequent reviews or special reviews of selected rules may be established by a bureau, the Secretary, or a Secretarial Officer. ►(2) Rules scheduled for review will be listed in the semiannual agenda (§ 14.12), and reviews will be completed within one year of originally being scheduled. (3) If it is determined that more than one year is needed to complete the review of a rule that has a significant economic effect on a substantial number of small entities, then such a determination will be published in the **Federal Register.** The determination will be approved by the Secretarial Officer having jurisdiction over the program to which the rule relates and may extend the completion date by one year at a time for a total of not more than five years.◄

(e) *Revision of rules.* If review of a rule indicates a need for repeal or revision, the procedures for development of significant rules (§ 14.6) or for development of other rules (§ 14.7) will be used as appropriate.

§ 14.12 Semiannual agenda.

(a) *Scope.* This section contains procedures for the publication of a semiannual agenda of those rules selected for review and development during the subsequent six month period.

(b) *Publication and Content of Agendas.* (1) The Department will publish a semiannual agenda in ►April and October◄ of each year.

(2) The agendas: (i) Will list all new or existing significant rules planned for development or revision; and (ii) will list all rules scheduled for review under the five-year cycle.

►(3) The agenda will include: (i) A summary which states the nature of and need for each action; (ii) the legal basis for each action; (iii) a brief description of the subject area which is likely to effect small entities, if applicable; (iv) the name, telephone number and address of the knowledgeable official for each action; (v) whether or not a regulatory analysis is required; (vi) information regarding a small entity flexibility analysis, if applicable; (vii) the schedule for completing actions, if known; and (viii) the status of those rules previously listed.◄

(c) *Approval.* (1) Each bureau will submit its semiannual agenda to the Assistant Secretary—Policy, Budget and Administration through the Secretarial Officer having jurisdiction over the bureau.

(2) The Department's semiannual agenda must be approved by the Secretary prior to publication in the **Federal Register.**

►(d) To the extent possible, notice of the semiannual agenda with a request for comments will be provided to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities.◄

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Part VIII

Department of Energy

Economic Regulatory Administration

Electric and Gas Utilities Covered in 1981 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-79-43A]

Electric and Gas Utilities Covered in 1981 by Titles I and III of the Public Utility Regulatory Policies Act of 1978 and Titles II and VII of the National Energy Conservation Policy Act

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice.

SUMMARY: Sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA) and section 211(b) of the National Energy Conservation Policy Act of 1978 (NECPA) require the Secretary of Energy to publish a list, before the beginning of each calendar year, identifying each electric utility and gas utility to which Titles I and III of PURPA and Titles II and VII of NECPA apply during such calendar year. The Notice containing the proposed list for 1981 was published in the Federal Register on October 10, 1980. The statutorily required final list is published here as two separate tabulations, Appendices A and B. Appendix A lists the covered utilities by State, and Appendix B lists them in alphabetical order. These two tabulations are referred to hereinafter as "the lists."

Written comments were requested on the accuracy of the lists. The Notice issued today sets forth the Department of Energy's response to each of the five comments received. The final lists have been modified to reflect these responses.

FOR FURTHER INFORMATION CONTACT:

Nancy E. Tate, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street, N.W., (Room 4306), Washington, D.C. 20461, (202) 653-3920

William L. Webb, Office of Public Information, Economic Regulatory Administration, 2000 M Street, N.W., (Room B-110), Washington, D.C. 20461, (202) 653-4055

Arthur Perry Bruder, Office of General Counsel, Conservation and Solar Energy, Department of Energy, 1000 Independence Avenue, S.W., (Room 6B-144), Washington, D.C. 20585, (202) 252-9516

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to sections 102(c) and 301(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*) and section 211(b) of the National Energy Conservation Policy Act (NECPA), Pub. L. 95-619, 92 Stat. 3206 *et seq.* (42 U.S.C. 8211 *et seq.*), the Department of Energy (DOE) is required to publish a list of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1981. State regulatory authorities are required by the above cited sections of PURPA and NECPA to notify the Secretary of Energy as to their ratemaking authority over the listed utilities.

On October 10, 1980, DOE issued a Notice containing two proposed lists (Appendix A and B) of utilities to which PURPA and NECPA apply in 1981 and requesting each State regulatory authority to notify DOE in writing of each utility on the lists for which it has ratemaking authority (45 FR 67553, October 10, 1980). Appendix A separately identifies each State regulatory authority, the covered utilities it regulates, and other covered utilities in the State not regulated by the State regulatory authority. Appendix B lists the utilities alphabetically, subdivided into electric and gas utilities and by type of ownership. Public comments were requested on the accuracy of these two appendices.

In response, United Cities Gas (United) and the City of Lafayette, Louisiana Department of Utilities (Lafayette) each submitted a comment requesting deletion from the lists. Equitable Gas (Equitable) submitted a comment requesting deletion from the lists for a portion of its operations which is carried out in Kentucky. The City of El Paso (El Paso), and a group of three subsidiaries of Central and South West Corporation (Central and South West), filed comments pertaining to Appendix A's description of Texas' regulatory structure and responsibilities.

Following is a discussion of the comments, and of DOE's response to them.

II. Discussion of Comments and DOE Response

On September 24, 1979, DOE issued a Notice containing two lists of electric and as utilities to which PURPA and NECPA would apply in 1980. In response to that issuance, CP National (CP) submitted a comment requesting deletion from the lists. In support of the request, it pointed out that it operated geographically separate distribution systems, none of which alone exceeded the coverage thresholds for PURPA and NECPA. CP also cited DOE's earlier deletion of Citizens Utilities Company (Citizens) from the 1979 lists. After consideration of CP's request, and reconsideration of Citizen's situation, DOE determined, on June 11, 1980, that both Citizens and CP should be deleted from the lists. The basis for this decision was that both companies were comprised of divisions or systems which were not interconnected, nor operated on a coordinated basis, nor joined together for the purpose of rate filings. Thus, it was decided that each division or system was to be treated as an individual entity. Since none of these individual entities exceeded the PURPA and NECPA thresholds, it was decided that neither CP nor Citizens nor any division or system of either would be included on the lists.

These criteria were applied to the requests of United and Equitable for deletion from the lists for 1981. The following is a discussion of those requests, and DOE's decision on them.

A. *United Cities Gas Company.* United asserts that it is "a diversified natural gas distribution company" which serves thirteen "separate" gas distribution systems in six States (Georgia, Illinois, North Carolina, South Carolina, Tennessee and Virginia). United further asserts that it is not vertically integrated with regard to production, transmission, or distribution, does not operate a single interconnected system in any one geographical area, and purchases its natural gas from numerous suppliers. Finally, it contends that none of the individual systems alone exceeds the PURPA and NECPA 10 Bcf threshold.

In light of this information, DOE has determined that United meets the criteria which, as discussed above, have been established for deletion from the lists. The lists published here have been amended to reflect this determination.

B. *Equitable Gas Company.* Equitable indicates that it engages in the purchase, production, transmission, storage, distribution and sale of natural gas in the States of Pennsylvania, West Virginia and Kentucky. It further indicates that its Pennsylvania and West Virginia operations exceed the 10 Bcf threshold and are, therefore, properly included on the lists. However, it asserts that its Kentucky operation is "completely separate" from and not physically connected to its Pennsylvania and West Virginia operating divisions, and further asserts that the Kentucky operation has annual sales which are substantially below the 10 Bcf threshold. Given this situation, Equitable requests that its operation in Kentucky be deleted from the lists.

Applying the above discussed criteria, DOE has determined that Equitable's Kentucky operation should be deleted. The lists published here have been amended to reflect this determination.

C. *City of Lafayette Department of Utilities.* Lafayette's comment protested its inclusion on the lists, asserting that

its retail sales for 1978 were not in excess of the 750 million kWh NECPA threshold. This argument is moot because 1979, not 1978, is the relevant year for determining whether any company meets the subject threshold for coverage in 1981. Consequently, DOE has determined that Lafayette shall remain subject to both NECPA and PURPA, at least until such time as DOE receives evidence which indicates that Lafayette's 1979 sales were not in excess of 750 kWh.

D. *City of El Paso.* El Paso's comment includes two related suggestions:

(1) It would be appropriate to "refine" Appendix A's description of the Texas utility regulatory responsibilities;

(2) DOE should make "some special effort" to communicate with certain Texas governmental entities, to inform each of whether it is a "ratemaking authority" for purposes of determining whether it is required to carry out certain statutory responsibilities under PURPA.

Both of these questions stem from the fact that Texas has a unique utility regulatory structure. Under this structure, each individual municipality has original jurisdiction to fix electric and gas rates within its boundaries. The Texas Public Utility Commission (TPUC) is granted the right to conduct a *de novo* review of any municipality's decision concerning electric rates, upon any party's request. A municipality may, under the statute, surrender its authority over electric rates to the TPUC. The Texas Railroad Commission has appellate jurisdiction over the gas rate decisions of any municipality.

El Paso points out, first, that Appendix A fails, in its description of the Texas regulatory structure for electric rates (published at 45 FR 67559), to include a reference to the statutory surrender provision for electric rates. It further points out that the notes to Appendix A are incorrect when they state that municipalities' powers to regulate electric utilities are limited only to investor-owned utilities. DOE has determined that these contentions are correct. Therefore, the subject language has been revised to read as follows:

> The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations and services provided by an electric utility (whether privately owned or publicly owned) within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears, *de novo*, appeals from the decisions of such municipalities.

As to El Paso's second request, that DOE inform Texas municipalities as to whether or not each is a "ratemaking authority" for purposes of having responsibilities under PURPA, DOE has determined that such an effort is neither necessary nor practicable. For one thing, such a notification procedure exceeds DOE's statutory obligations. Secondly, the Texas Municipal League is carrying out this effort, and the League is more familiar than DOE with the subject entities. Therefore, DOE is denying El Paso's second request.

E. *Central and South West Corporation.* As noted above, the State of Texas has a unique utility regulatory structure under which each individual municipality is empowered to fix electric rates within its boundaries. If a rate determination of any such municipality is appealed, the appeal is heard *de novo* by the TPUC.

PURPA mandates that decisions as to whether or not to adopt each of the various PURPA ratemaking standards are to be made by the "State regulatory authority". Since that term is defined as "* * * any State agency that has ratemaking authority," it would appear that, in Texas, these decisions must be made by each of the individual municipalities, since each has the power to make rates.

Central and South West asserts, however, that under Texas law, the TPUC is the "State regulatory authority" and that the TPUC, rather than the individual municipalities, should therefore make the decisions concerning adoption or rejection of each PURPA standard.

In support of this assertion, Central and South West points to three particular sections of Texas law on utility regulation:

(1) A section which requires that municipalities regulate utilities via "standards and rules" that are "the same as", or "not inconsistent with", standards which the TPUC sets for ratemaking (The Public Utility Regulatory Act, TEX. REV. CIV. STAT. ANN., art. 1446c, section 22);

(2) A section which mandates that "* * * all rules and regulations promulgated by (municipalities in regard to their regulation of utilities) * * * shall remain in effect (only) until * * * (t)he (TPUC) * * * promulgates provisions applicable to the exercise of the (TPUC's) * * * jurisdiction over public utilities"—(*Ibid*, section 90);

(3) A provision which mandates, as mentioned above, that any appeal from any municipality's ratemaking order shall be heard *de novo* by the TPUC (id. section 526).

Thus, Central and South West argues, the Texas municipalities have no power to make any "standards," and have, in effect, only "limited" ratemaking authority because they cannot set ratemaking standards and are, in any event, subject to being overruled by a PUC which hears appeals *de novo*.

DOE does not find these arguments persuasive. Even conceding that the TPUC has significant power to set the "standards" under which the municipalities determine rates, and although the PUC may have sweeping power to review those determinations, the fact remains that the municipalities, not the PUC, have original ratemaking power. For this reason, DOE has determined that the individual municipalities, and not the TPUC, are the "State regulatory authorities." Thus, each individual municipality must make a set of individual determinations as to adoption or rejection of each of the PURPA standards (unless it has surrendered its ratemaking authority to the TPUC).

III. List of Electric Utilities and Gas Utilities

The lists of utilities to which Titles I and III of PURPA and Titles II and VII of NECPA apply in 1981 are the lists which were published with the October 10, 1980 Notice, except that United, and Equitable's Kentucky operation are deleted and the description of the regulation structure of the State of Texas is to some degree revised. These lists are for 1981 only. The determinations set forth in this Notice may be modified with respect to later lists.

It should be noted that the inclusion or exclusion of any utility on or from the lists does not affect the legal obligations of such utility or the responsible State regulatory authority under PURPA and NECPA.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3206 *et seq.* (42 U.S.C. 8211 *et seq.*))

Issued in Washington, D.C. on December 19, 1980.

Howard Perry,

Acting Assistant Administrator for Utility Systems.

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978 or 1979 and are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) do not have residential or commercial sales, and therefore, are not covered by NECPA Titles II and VII.

All electric utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977, 1978 or

1979. All, except those marked (*), are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either do not exceed the NECPA threshold of 750 million kilowatt-hours in 1979, for purposes other than resale, or do not have residential or commercial sales, and therefore, are not covered by NECPA Titles II and VII.

State: Alabama

Regulatory Authority: Alabama Public Service Commission.

Gas Utilities

Investor-Owned:
Alabama Gas Corporation
Mobile Gas Service Corporation

Electric Utilities

Investor-Owned:
Alabama Power Company:

The following covered utilities within the State of Alabama are not regulated by the Alabama Public Service Commission:

Electric Utilities

Publicly-Owned:
Decatur Electric Department
*Dothan Electric Department
*Florence Electricity Department
Huntsville Electric System

State: Alaska

Regulatory Authority: Alaska Public Utilities Commission.

Gas Utilities

Investor-Owned:
Alaska Gas and Service Company

Electric Utilities

Rural Electric Cooperatives:
Chugach Electric Association
Publicly-Owned:
*Anchorage Municipal Light & Power Department

State: Arizona

Regulatory Authority: Arizona Corporation Commission.

Gas Utilities

Investor-Owned:
Arizona Public Service Company
Southern Union Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Arizona Public Service Company
Tuscon Electric Power Company

The following covered utility within the State of Arizona is not regulated by the Arizona Corporation Commission:

Electric Utilities

Publicly-Owned:
Salt River Project Agricultural Improvement and Power District

State: Arkansas

Regulatory Authority: Arkansas Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Arkansas Western Gas Company
Associated Natural Gas Company

Electric Utilities

Investor-Owned:
Arkansas-Missouri Power Company
Arkansas Power and Light Company
Empire District Electric Company
Oklahoma Gas and Electric company
Southwestern Electric and Power Company
Rural Electric Cooperatives:
*First Electric Cooperative Corporation

The following covered utility within the State of Arkansas in not regulated by the Arkansas Public Service Commission:
Publicly-Owned:
*North Little Rock Electric Department

State: California

Regulatory Authority: California Public Utilities Commission.

Gas Utilities

Investor-Owned:
Pacific Gas and Electric Company
San Diego Gas and Electric Company
Southern California Gas Company
Southwest Gas Corporation

Electric Utilities

Investor-Owned:
Pacific Gas and Electric Company
Pacific Power and Light Company
San Diego Gas and Electric Company
Sierra Pacific Power Company
Southern California Edison Company

The following covered utilities within the State of California are not regulated by the California Public Utilities Commission:

Electric Utilities

Publicly-Owned:
Anaheim Electric Division
Burbank Public Service Department
*Glendale Public Service Department
Imperial Irrigation District
Los Angeles Department of Water and Power
Modesto Irrigation District
Palo Alto Electric Utility
Pasadena Water and Power Department
Riverside Public Utilities
Sacramento Municipal Utility District
Santa Clara Electric Department
*Turlock Irrigation District
Vernon Municipal Light Department

Gas Utilities

Publicly-Owned:
Long Beach Gas Department

State: Colorado

Regulatory Authority: Colorado Public Utilities Commission.

Gas Utilities

Investor-Owned:
Greeley Gas Company
Iowa Electric Light and Power Company
Kansas-Nebraska Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)

Electric Utilities

Investor-Owned:
Central Telephone and Utilities Corporation
Public Service Company of Colorado
Publicly-Owned:
Colorado Springs Department of Public Utilities (jurisdiction only outside city limits)

The following covered utilities within the State of Colorado are not regulated by the Colorado Public Utilities Commission:

Gas Utilities

Publicly-Owned:
Colorado Springs Department of Public Utilities (within city limits)

Electric Utilities

Publicly-Owned:
Colorado Springs Department of Public Utilities (within city limits)

State: Connecticut

Regulatory Authority: Connecticut Division of Public Utility Control.

Gas Utilities

Investor-Owned:
Connecticut Light and Power Company
Connecticut Natural Gas Corporation
Southern Connecticut Gas Company

Electric Utilities

Investor-Owned:
Connecticut Light and Power Company
Hartford Electric Light Company
United Illuminating Company

State: Delaware

Regulatory Authority: Delaware Public Service Commission.

Gas Utilities

Investor-Owned:
Delmarva Power and Light Company

Electric Utilities

Investor-Owned:
Delmarva Power and Light Company

State: District of Columbia

Regulatory Authority: Public Service Commission of the District of Columbia.

Gas Utilities

Investor-Owned:
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Potomac Electric Power Company

State: Florida

Regulatory Authority: Florida Public Service Commission.

Gas Utilities

Investor-Owned:
City Gas Company of Florida
Peoples Gas System

Electric Utilities

Investor-Owned:

Florida Power Corporation
Florida Power and Light Company
Gulf Power Company
Tampa Electric Company
Publicly-Owned: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
*Gainesville Regional Utilities
Jacksonville Electric Authority
Lakeland Department of Electricity and Water
Orlando Utilities Commission
Tallahassee, City of
Rural Electric Cooperatives: The Florida Public Service Commission has rate structure jurisdiction over the following utilities—
Clay Electric Cooperative
Lee County Electric Cooperative
*Withlachoochee River Electric Cooperative

State: Georgia

Regulatory Authority: Georgia Public Service Commission.

Gas Utilities

Investor-Owned:
Atlanta Gas Light Company
Chattanooga Gas Company
Gas Light Company of Columbus

Electric Utilities

Investor-Owned:
Georgia Power Company
Savannah Electric and Power Company

The following utilities within the State of Georgia are not regulated by the Georgia Public Service Commission:

Electric Utilities

Publicly-Owned:
*Albany Water, Gas & Light Commission
Rural Electric Cooperatives:
*Flint Electrical Membership Corporation
*Jackson Electric Membership Corporation
North Georgia Electric Membership Corporation

State: Hawaii

Regulatory Authority: Hawaii Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Hawaiian Electric Company, Inc.

State: Idaho

Regulatory Authority: Idaho Public Utilities Commission.

Gas Utilities

Investor-Owned:
Intermountain Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Utah Power and Light Company
Washington Water Power Company

State: Illinois

Regulatory Authority: Illinois Commerce Commission.

Gas Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
North Shore Gas Company
Northern Illinois Gas Company
Panhandle Eastern Pipeline Company
Peoples Gas, Light and Coke Company

Electric Utilities

Investor-Owned:
Central Illinois Light Company
Central Illinois Public Service Company
Commonwealth Edison Company
Illinois Power Company
Interstate Power Company
Iowa-Illinois Gas and Electric Company
Union Electric Company

The following covered utility within the State of Illinois is not regulated by the Illinois Commerce Commission:

Electric Utilities

Publicly-Owned:
Springfield Water, Light and Power Department

State: Indiana

Regulatory Authority: Indiana Public Service Commission.

Gas Utilities

Investor-Owned:
Indiana Gas Company
Kokomo Gas and Fuel Company
Northern Indiana Public Service Company
Southern Indiana Gas and Electric Company
Terre Haute Gas Corporation
Public-Owned:
Citizens Gas and Coke Utility

Electric Utilities

Investor-Owned:
Indiana and Michigan Electric Company
Indianapolis Power and Light Company
Northern Indiana Public Service Company
Public Service Company of Indiana
Southern Indiana Gas and Electric Company
Publicly-Owned:
*Richmond Power and Light

State: Iowa

Regulatory Authority: Iowa Commerce Commission.

Gas Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Minnesota Gas Company
North Central Public Service Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Iowa Electric Light and Power Company
Iowa-Illinois Gas and Electric Company
Iowa Power and Light Company
Iowa Public Service Company
Iowa Southern Utilities Company
Union Electric Company
Publicly-Owned: The Iowa Commerce Commission has service and safety regulation over the following utilities—
*Muscatine Power and Water
Omaha Public Power District

State: Kansas

Regulatory Authority: Kansas State Corporation Commission.

Gas Utilities

Investor-Owned:
Anadarko Production Company
Arkansas-Louisiana Gas Company
Gas Service Company
Greeley Gas Company
Kansas-Nebraska Natural Gas Company
Kansas Power and Light Company
Northern Natural Gas Company
Panhandle Eastern Pipeline Company
Peoples Natural Gas Company, Division of Internorth, Inc.
Union Gas System Inc.

Electric Utilities

Investor-Owned:
*Central Kansas Power Company
Empire District Electric Company
Kansas City Power and Light Company
Kansas Gas and Electric Company
Kansas Power and Light Company
Southwestern Public Service Company
Western Power Division Central Telephone and Utilities Corporation

The following covered utility within the State of Kansas is not regulated by the Kansas State Corporation Commission:

Electric Utilities

Public-Owned:
Kansas City Board of Public Utilities

State: Kentucky

Regulatory Authority: Kentucky Energy Regulatory Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Kentucky, Inc.
Inland Gas Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Western Kentucky Gas Company

Electric Utilities

Investor-Owned:
Kentucky Power Company
Kentucky Utilities Company
Louisville Gas and Electric Company
Union Light, Heat and Power Company
Rural Electric Cooperatives:
Green River Electric Corporation
Henderson-Union Rural Electric Cooperative Corporation

The following covered utilities within the State of Kentucky are not regulated by the Kentucky Energy Regulatory Commission:

*Owensboro Municipal Utilities
*Pennyrile Rural Electric Cooperative Corporation
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Louisiana

Regulatory Authority: Louisiana Public Service Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Gulf States Utilities Company
Louisiana Gas Service Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light
Central Louisiana Electric Company
Gulf States Utilities Company
Louisiana Power and Light Company (jurisdiction only outside of the Parish of Orleans)
Southwestern Electric Power Company

The following covered utilities within the State of Louisiana are not regulated by the Louisiana Public Service Commission:

Gas Utilities

Investor-Owned:
New Orleans Public Service, Inc.

Electric Utilities

Investor-Owned:
New Orleans Public Service, Inc.
Louisiana Power and Light Company (within the Parish of Orleans)
Publicly-Owned:
Lafayette Utilities System
Rural Electric Cooperatives:
Southwest Louisiana Electric Membership Corporation

State: Maine

Regulatory Authority: Maine Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Bangor Hydro-Electric Company
Central Maine Power Company
Public Service Company of New Hampshire

State: Maryland

Regulatory Authority: Maryland Public Service Commission.

Gas Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Baltimore Gas and Electric Company
Delmarva Power and Light Company of Maryland
Potomac Edison Company
Potomac Electric Power Company
Rural Electric Cooperatives:
Southern Maryland Electric Cooperative, Inc.

State: Massachusetts

Regulatory Authority: Massachusetts Department of Public Utilities.

Gas Utilities

Investor-Owned:
Bay State Gas Company
Boston Gas Company
Commonwealth Gas Company
Lowell Gas Company
New Bedford Gas and Edison Light Company

Electric Utilities

Investor-Owned:
Boston Edison Company
Cambridge Electric Light Company
Eastern Edison Company
Massachusetts Electric Company
New Bedford Gas and Edison Light Company
Western Massachusetts Electric Company

State: Michigan

Regulatory Authority: Michigan Public Service Commission.

Gas Utilities

Investor-Owned:
Consumers Power Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Southeastern Michigan Gas Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
Consumers Power Company
Detroit Edison Company
Indiana and Michigan Electric Company
*Lake Superior District Power Company
*Michigan Power Company
Upper Peninsula Power Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

The following covered utilites within the State of Michigan are not regulated by the Michigan Public Service Commission:

Electric Utilites

Publicly-Owned:
Lansing Board of Water and Light

State: Minnesota

Regulatory Authority: Minnesota Public Utility Commission.

Gas Utilities

Investor-Owned:
Greeley Gas Company
Inter City Gas Limited
Interstate Power Company
Iowa Electric Light and Power Company
Minnesota Gas Company
Montana-Dakota Utilities Company
North Central Public Service Company
Northern States Power Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Interstate Power Company
Minnesota Power and Light Company
Northern States Power Company
Otter Tail Power Company

The following covered utility within the State of Minnesota is not regulated by the Minnesota Public Service Commission:

Electric Utilities

Rural Electric Cooperatives:
*Anoka Electric Cooperative

State: Mississippi

Regulatory Authority: Mississippi Public Service Commission.

Gas Utilities

Investor-Owned:
Entex, Inc.
Mississippi Valley Gas Company

Electric Utilities

Investor-Owned:
Mississippi Power and Light Company
Mississippi Power Company

The following covered utilities within the State of Mississippi are not regulated by the Mississippi Public Service Commission:

Electric Utilities

Rural Electric Cooperatives:
*4-County Electric Power Association
*Singing River Electric Power Association
*Southern Pine Electric Power Association

State: Missouri

Regulatory Authority: Missouri Public Service Commission.

Gas Utilities

Investor-Owned:
Associated Natural Gas Comapny
Gas Service Company
Laclede Gas Company Consolidated
Missouri Public Service Company
Peoples Natural Gas Company, Division of Internorth, Inc.

Electric Utilities

Investor-Owned:
Arkansas-Missouri Power Company
Empire District Electric Company
Kansas City Power and Light Company
Missouri Edison Company
Missouri Power and Light Company
Missouri Public Service Company
Missouri Utilities Company
St. Joseph Light and Power Company
Union Electric Company

The following covered utilities within the State of Missouri are not regulated by the Missouri Public Service Commission:

Gas Utilities

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
Springfield City Utilities

Electric Utilities

Publicly-Owned:
*Independence Power and Light Department
Springfield City Utilities

State: Montana

Regulatory Authority: Montana Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Montana Power Company.

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Montana Power Company
Pacific Power and Light Company
Washington Water Power Company

State: Nebraska

Regulatory Authority: Nebraska Public Service Commission.

The Commission does not regulate the rates and services of the gas and electric utilities of the State of Nebraska.

The following covered utilities within the State of Nebraska are not regulated by the Nebraska Public Service Commission:

Electric Utilities

Publicly-Owned
Lincoln Electric System
Nebraska Public Power District
Omaha Public Power District

Gas Utilities

Investor-Owned:
Gas Service Company
Iowa Electric Light and Power Company
Iowa Public Service Company
Kansas-Nebraska Natural Gas Company
Minnesota Gas Company
Northern Natural Gas Company
Northwestern Public Service Company
Peoples Natural Gas Company, Division of Internorth, Inc.

The governing body of each Nebraska municipality exercises ratemaking jurisdiction over gas utility rates, operations and services provided by a gas utility within its city or town limits. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of the State regulatory authority.

Publicly-Owned:
Metropolitan Utilities District of Omaha

State: Nevada

Regulatory Authority: Nevada Public Service Commission.

Gas Utilities

Investor-Owned:
Southwest Gas Corporation

Electric Utilities

Investor-Owned
Idaho Power Company
Nevada Power Company
Sierra Pacific Power Company

State: New Hampshire

Regulatory Authority: New Hampshire Public Utilities Commission.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Public Service Company of New Hampshire

State: New Jersey

Regulatory Authority: New Jersey Department of Energy, Board of Public Utilities.

Gas Utilities

Investor-Owned:
Elizabethtown Gas Company
New Jersey Natural Gas Company
Public Service Electric and Gas Company
South Jersey Gas Company

Electric Utilities

Investor-Owned:
Atlantic City Electric Company
Jersey Central Power and Light Company
Public Service Electric and Gas Company
Rockland Electric Company

State: New Mexico

Regulatory Authority: New Mexico Public Service Commission.

Gas Utilities

Gas Company of New Mexico

Electric Utilities

Investor-Owned:
Community Public Service Company
El Paso Electric Company
*New Mexico Electric Service Company
Public Service Company of New Mexico
Southwestern Public Service Company

State: New York

Regulatory Authority: New York Public Service Commission.

Gas Utilities

Investor-Owned:
Brooklyn Union Gas Company
Columbia Gas of New York, Inc.
Consolidated Edison Company of New York, Inc.
Long Island Lighting Company
National Fuel Gas Distribution Corporation
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

Electric Utilities

Investor-Owned:
Central Hudson Gas and Electric Corporation
Consolidated Edison Company of New York
Long Island Lighting Company
New York State Electric and Gas Corporation
Niagara Mohawk Power Corporation
Orange and Rockland Utilities
Rochester Gas and Electric Corporation

The following covered utility within the State of New York is not regulated by the New York Public Service Commission:

Electric Utilities

Publicly-Owned:
*Power Authority of New York

State: North Carolina

Regulatory Authority: North Carolina Utilities Commission.

Gas Utilities

Investor-Owned:
North Carolina Natural Gas Corporation
Piedmont Natural Gas Company
Public Service Company, Inc. of North Carolina

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
Virginia Electric and Power Company

The following covered utilities within the State of North Carolina are not regulated by the North Carolina Utilities Commission:

Electric Utilities

Publicly-Owned:
Fayetteville Public Works Commission
*Greenville Utilities Commission
*Rocky Mount Public Utilities
*Wilson Utilities Department

State: North Dakota

Regulatory Authority: North Dakota Public Service Commission.

Gas Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Northern States Power Company

Electric Utilities

Investor-Owned:
Montana-Dakota Utilities Company
Northern States Power Company
Otter Tail Power Company

State: Ohio

Regulatory Authority: Ohio Public Utilities Commission.

Gas Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Columbia Gas of Ohio, Inc.
Dayton Power and Light Company
East Ohio Gas Company
National Gas and Oil Company
West Ohio Gas Company

Electric Utilities

Investor-Owned:
Cincinnati Gas and Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Dayton Power and Light Company
Monongahela Power Company
Ohio Edison Company
Ohio Power Company
Toledo Edison Company

The following covered utilities within the State of Ohio are not regulated by the Ohio Public Utilities Commission:

Electric Utilities

Publicly-Owned:
*Cleveland Division of Light and Power
Rural Electric Cooperatives:
*South Central Power Company

State: Oklahoma

Regulatory Authority: Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Arkansas-Oklahoma Gas Corporation
Gas Service Company
Lone Star Gas Company
Oklahoma Natural Gas Company
Southern Union Gas Company
Union Gas System Inc.

Electric Utilities

Investor-Owned:
Empire District Electric Company
Oklahoma Gas and Electric Company
Public Service Company of Oklahoma
Southwestern Public Service Company

The following covered utility within the State of Oklahoma is not regulated by the Oklahoma Corporation Commission.

Gas Utilities

Investor-Owned:
Cities Service Gas Company

State: Oregon

Regulatory Authority: Public Utility Commissioner of Oregon.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company

Electric Utilities

Investor-Owned:
Idaho Power Company
Pacific Power and Light Company
Portland General Electric Company

The following covered utilities within the State of Oregon are not regulated by the Public Utility Commissioner of Oregon:

Electric Utilities

Publicly-Owned:
Central Lincoln People's Utility District
*Clatskanie People's Utility District
Eugene Water and Electric Board
*Springfield Utilities Board
Rural Electric Cooperatives:
*Umatilla Electric Cooperative Association

State: Pennsylvania

Regulatory Authority: Pennsylvania Public Utility Commission.

Gas Utilities

Investor-Owned:
Carnegie Natural Gas Company
Columbia Gas of Pennsylvania, Inc.
Equitable Gas Company
National Fuel Gas Distribution Corporation
North Penn Gas Company
Pennsylvania Gas and Water Company
Peoples Natural Gas Company
Philadelphia Electric Company
T. W. Phillips Gas and Oil Company
UGI Corporation

Electric Utilities

Investor-Owned:
Duquesne Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
Pennsylvania Power and Light Company
Philadelphia Electric Company
*UGI—Luzerne Electric Division
West Penn Power Company

The following covered utility within the State of Pennsylvania is not regulated by the Pennsylvania Public Utility Commission:

Gas Utilities

Publicly-Owned:
Philadelphia Gas Works

State: Puerto Rico

Regulatory Authority: Puerto Rico Public Service Commission.

Gas Utilities

None.

Electric Utilities

None.

The following covered utility within Puerto Rico is not regulated by the Puerto Rico Public Service Commission:

Electric Utilities

Publicly-Owned:
Puerto Rico Electric Power Authority

State: Rhode Island

Regulatory Authority: Rhode Island Public Utilities Commission.

Gas Utilities

Investor-Owned:
Providence Gas Company

Electric Utilities

Investor-Owned:
Blackstone Valley Electric Company
Narragansett Electric Company

State: South Carolina

Regulatory Authority: South Carolina Public Service Commission.

Gas Utilities

Investor-Owned:
*Carolina Pipeline Company
Piedmont Natural Gas Company
South Carolina Electric and Gas Company

Electric Utilities

Investor-Owned:
Carolina Power and Light Company
Duke Power Company
South Caroina Electric and Gas Company

The following covered utility within the State of South Carolina is not regulated by the South Carolina Public Service Commission:

Electric Utilities

Publicly-Owned:
South Carolina Public Service Authority

State: South Dakota

Regulatory Authority: South Dakota Public Utilities Commission.

Gas Utilities

Investor-Owned:
Iowa Public Service Company
Minnesota Gas Company
Montana-Dakota Utilities Company
Northwestern Public Service Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Iowa Public Service Company
Montana-Dakota Utilities Company
Northern States Power Company
*Northwestern Public Service Company
Otter Tail Power Company

The following covered utility within the State of South Dakota is not regulated by the South Dakota Public Service Commission:

Electric Utilities

Publicly-Owned:
Nebraska Public Power District

State: Tennessee

Regulatory Authority: Tennessee Public Service Commission.

Gas Utilities

Investor-Owned:
Chattanooga Gas Company
Nashville Gas Company

Electric Utilities

Investor-Owned:
Arkansas Power and Light Company
Kentucky Utilities Company
Kingsport Power Company

The following covered utilities within the State of Tennessee are not regulated by the Tennessee Public Service Commission:

Electric Utilties

Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
*Greeneville Light and Power System
*Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis Light, Gas and Water Division
*Nashville Electric Service
Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennnessee Electric Membership Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative

Gas Utilities

Publicly-Owned:
Memphis Light, Gas and Water Division

State: Tennessee

Regulatory Authority: Tennessee Valley Authority.

Gas Utilities

None.

Electric Utilities

Publicly-Owned:
*Bristol Tennessee Electric System
Chattanooga Electric Power Board
*Clarksville Department of Electricity
*Cleveland Utilities
Decatur Electric Department
*Florence Electricity Department
*Greeneville Light and Power System
Huntsville Electric System
Jackson Utility Division—Electric Department
Johnson City Power Board
Knoxville Utilities Board
*Lenoir City Utilities Board
Memphis, Light, Gas and Water Division
Nashville Electic Service
Rural Electric Cooperatives:
*Appalachian Electric Cooperative
Cumberland Electric Membership Corporation
*Duck River Electric Membership Corporation
*Four-County Electric Power Association
*Gibson County Electric Membership Corporation
*Meriwether Lewis Electric Cooperative
Middle Tennessee Electric Membership Corporation
North Georgia Electric Membership Corporation
*Pennyrile Rural Electric Cooperative Corporation
*Southwest Tennessee Electric Membership Corporation
*Tri-County Electric Membership Corporation
*Upper Cumberland Electric Membership Corporation
Volunteer Electric Cooperative
*Warren Rural Electric Cooperative Corporation
*West Kentucky Rural Electric Cooperative Corporation

State: Texas

Regulatory Authority: Texas Public Utility Commission.

Gas Utilities

Investor-Owned:
None.

Electric Utilities

Investor-Owned:
Central Power and Light Company
Community Public Service Company
Dallas Power and Light Company
El Paso Electric Company
Gulf States Utilities
Houston Lighting and Power Company
Southwestern Electric Power Company
*Southwestern Electric Service Company
Southwestern Public Service Company
Texas Electric Service Company
Texas Power and Light Company
West Texas Utilities Company
Publicly-Owned:
*Lower Colorado River Authority
Rural Electric Cooperatives:
*Pedernales Electric Cooperative

The governing body of each Texas municipality exercises exclusive original jurisdiction over electric utility rates, operations, and services provided by an electric utility (whether privately owned or publicly owned) within its city or town limits, unless the municipality has surrendered this jurisdiction to the Texas Public Utility Commission. The Commission hears *de novo* appeals from the decisions of such municipalities. These municipal authorities would be State agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The municipally-owned electric utilities listed below are not under the commission's original ratemaking jurisdiction.

Electric Utilities

Publicly-Owned:
Austin Electric Department
Garland Electric Department
*Lubbock Power and Light
San Antonio City Public Service Board

State: Texas

Regulatory Authority: Railroad Commission of Texas.

Gas Utilities

Investor-Owned:
Arkansas-Louisiana Gas Company
Entex, Inc.
Lone Star Gas Company
Peoples Natural Gas Division of Northern Natural Gas Company
Pioneer Natural Gas Company
Southern Union Gas Company

The Railroad Commission of Texas has special appellate jurisdiction over ratemaking decisions of the governing body of any municipality which affect the rates of a municipally-owned gas utility as provided by State statute. The governing body of each Texas municipality exercises exclusive original ratemaking jurisdiction over gas utility rates, operations, and services provided by a gas utility within its city or town limits. These municipal authorities would be state agencies as defined by PURPA, and thus have responsibilities under PURPA identical to those of a State regulatory authority.

The following covered utilities within the State of Texas are not regulated by the Railroad Commission of Texas:

Gas Utilities

Investor-Owned:
Cities Service Gas Company
Publicly-Owned:
City Public Service Board (San Antonio)

State: Utah

Regulatory Authority: Utah Public Service Commission.

Gas Utilities

Investor-Owned:
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Utah Power and Light Company
Rural Electric Cooperatives:
*Moon Lake Electric Association

State: Vermont

Regulatory Authority: Vermont Public Service Board.

Gas Utilities

None.

Electric Utilities

Investor-Owned:
Central Vermont Public Service Corporation
Green Mountain Power Corporation
Public Service Company of New Hampshire

State: Virginia

Regulatory Authority: Virginia State Corporation Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of Virginia, Inc.
Virginia Electric and Power Company
Washington Gas Light Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Delmarva Power and Light Company of Virginia
*Old Dominion Power Company
Potomac Edison Company
Potomac Electric and Power Company

Rural Electric Cooperatives:

*Prince William Electric Cooperative

The following covered utility within the State of Virginia is not regulated by the Virginia State Corporation Commission:

Gas Utilities

Publicly-Owned:
City of Richmond, Virginia, Department of Public Utilities

State: Washington

Regulatory Authority: Washington Utilities and Transportation Commission.

Gas Utilities

Investor-Owned:
Cascade Natural Gas Corporation
Northwest Natural Gas Company
Washington Natural Gas Company
Washington Water Power Company

Electric Utilities

Investor-Owned:
Pacific Power and Light Company
Puget Sound Power and Light Company
Washington Water Power Company

The following covered utilities within the State of Washington are not regulated by the Washington Utilities and Transportation Commission.

Electric Utilities

Publicly-Owned
* Port Angeles Light and Water Department
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
* Public Utility District No. 1 of Douglas County
* Public Utility District No. 1 of Franklin County
Public Utility District of Grant County

Public Utility District No. 1 of Grays Harbor County
* Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Snohomish County
* Richland Energy Services Department
Seattle City Light Department
Tacoma Public Utilities—Light Division

State: West Virginia

Regulatory Authority: West Viriginia Public Service Commission.

Gas Utilities

Investor-Owned:
Columbia Gas of West Virginia, Inc.
Consolidated Gas Supply Corporation
Equitable Gas Company

Electric Utilities

Investor-Owned:
Appalachian Power Company
Monongahela Power Company
Potomac Edison Company
Virginia Electric and Power Company
Wheeling Electric Company

State: Wisconsin

Regulatory Authority: Wisconsin Public Service Commission.

Gas Utilities

Investor-Owned:
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Fuel and Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

Electric Utilities

Investor-Owned:
* Lake Superior District Power Company
Madison Gas and Electric Company
Northern States Power Company
Wisconsin Electric Power Company
Wisconsin Power and Light Company
Wisconsin Public Service Corporation

State: Wyoming

Regulatory Authority: Wyoming Public Service Commission.

Gas Utilities

Investor-Owned:
Cheyenne Light, Fuel and Power Company
Kansas-Nebraska Natural Gas Company
Montana-Dakota Utilities Company
Mountain Fuel Supply Company

Electric Utilities

Investor-Owned:
Black Hills Power and Light Company
Montana-Dakota Utilities Company
Pacific Power and Light Company
Utah Power and Light Company
Rural Electric Cooperative:
* Tri-County Electric Association, Inc.

Appendix B

Electric Utilities

All utilities listed below had electric energy sales, for purposes other than resale, in excess of 500 million kilowatt-hours in 1976, 1977, 1978 or 1979. All, except those marked (*), are covered by PURPA Title I and NECPA Titles II and VII. Utilities marked (*) either did not exceed the NECPA threshold of 750 million kilowatt-hours in 1979, for purposes other than resale, or do not have residential or commercial sales and, therefore, are not covered by NECPA Titles II and VII. The utilities listed more than once have sales in more than one State, and those States are indicated by abbreviations in parentheses.

Investor-Owned
Alabama Power Company
Appalachian Power Company (VA)
Appalachian Power Company (WV)
Arizona Public Service Company
Arkansas-Missouri Power Company (AR)
Arkansas-Missouri Power Company (MO)
Arkansas Power & Light Company (AR)
Arkansas Power & Light Company (LA)
Arkansas Power & Light Company (TN)
Atlantic City Electric Company
Baltimore Gas & Electric Company
Bangor Hydro-Electric Company
Black Hills Power & Light Company (MT)
Black Hills Power & Light Company (SD)
Black Hills Power & Light Company (WY)
Blackstone Valley Electric Company
Boston Edison Company
Cambridge Electric Light Company
Carolina Power & Light Company (NC)
Carolina Power & Light Company (SC)
Central Hudson Gas & Electric Corporation
Central Illinois Light Company
Central Illinois Public Service Company
*Central Kansas Power Company
Central Louisiana Electric Company
Central Maine Power Company
Central Power & Light Company
Central Vermont Public Service Corporation
Cincinnati Gas & Electric Company
Cleveland Electric Illuminating Company
Columbus and Southern Ohio Electric Company
Commonwealth Edison Company
Community Public Service Company (NM)
Community-Public Service Company (TX)
Connecticut Light & Power Company
Consolidated Edison Company of New York
Consumers Power Company
Dallas Power & Light Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
Delmarva Power & Light Company of Maryland
Delmarva Power & Light Company of Virginia
Detroit Edison Company
Duke Power Company (NC)
Duke Power Company (SC)
Duquesne Light Company
Eastern Edison Company
El Paso Electric Company (NM)
El Paso Electric Company (TX)
Empire District Electric Company (AR)
Empire District Electric Company (KS)
Empire District Electric Company (MO)
Empire District Electric Company (OK)
Florida Power Corporation
Florida Power & Light Company
Georgia Power Company
Green Mountain Power Corporation
Gulf Power Company
Gulf States Utilities Company (LA)
Gulf States Utilities Company (TX)
Hartford Electric Light Company
Hawaiian Electric Company, Inc.
Houston Lighting & Power Company
Idaho Power Company (ID)
Idaho Power Company (NV)
Idaho Power Company (OR)
Illinois Power Company
Indiana & Michigan Electric Company (IN)
Indiana & Michigan Electric Company (MI)
Indianapolis Power & Light Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Jersey Central Power & Light Company
Kansas City Power & Light Company (KS)
Kansas City Power & Light Company (MO)
Kansas Gas & Electric Company
Kansas Power & Light Company
Kentucky Power Company
Kentucky Utilities Company (KY)
Kentucky Utilities Company (TN)
Kingsport Power Company
*Lake Superior District Power Company (MI)
*Lake Superior District Power Company (WI)
Long Island Lighting Company
Louisiana Power & Light Company
Louisville Gas & Electric Company
Madison Gas & Electric Company
Massachusetts Electric Company
Metropolitan Edison Company
*Michigan Power Company
Minnesota Power & Light Company
Mississippi Power Company
Mississippi Power & Light Company
Missouri Edison Company
Missouri Power & Light Company
Missouri Public Service Company
Missouri Utilities Company
Monongahela Power Company (OH)
Monongahela Power Company (WV)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Narragansett Electric Company
Nevada Power Company
New Bedford Gas & Edison Light Company
*New Mexico Electric Service Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
Northern Indiana Public Service Company
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (SD)
Northern States Power Company (WI)
*Northwestern Public Service Company
Ohio Edison Company
Ohio Power Company
Oklahoma Gas & Electric Company (AR)

Oklahoma Gas & Electric Company (OK)
*Old Dominion Power Company
Orange & Rockland Utilities
Otter Tail Power Company (MN)
Otter Tail Power Company (ND)
Otter Tail Power Company (SD)
Pacific Power Light Company (CA)
Pacific Power Light Company (ID)
Pacific Power Light Company (MT)
Pacific Power Light Company (OR)
Pacific Power Light Company (WA)
Pacific Power Light Company (WY)
Pennsylvania Electric Company (PA)
Pennsylvania Power & Light Company
Pennsylvania Power Company
Philadelphia Electric Company
Portland General Electric Company
Potomac Edison Company (MD)
Potomac Edison Company (VA)
Potomac Edison Company (WV)
Potomac Electric Power Company (DC)
Potomac Electric Power Company (MD)
Potomac Electric Power Company (VA)
Public Service Company of Colorado
Public Service Company of Indiana
Public Service Company of New Hampshire (ME)
Public Service Company of New Hampshire (NH)
Public Service Company of New Hampshire (VT)
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas & Electric Corporation
Rockland Electric Company
St. Joseph Light & Power Company
San Diego Gas & Electric Company
Savannah Electric & Power Company
Sierra Pacific Power Company (CA)
Sierra Pacific Power Company (NV)
South Carolina Electric & Gas Company
Southern California Edison Company
Southern Indiana Gas & Electric Company
Southwestern Electric Power Company (AR)
Southwestern Electric Power Company (LA)
Southwestern Electric Power Company (TX)
*Southwestern Electric Service Company
Southwestern Public Service Company (KS)
Southwestern Public Service Company (NM)
Southwestern Public Service Company (OK)
Southwestern Public Service Company (TX)
Tampa Electric Company
Texas Electric Service Company
Texas Power & Light Company
Toledo Edison Company
Tucson Electric Power Company
*UGI-Luzerne Electric Division
Union Electric Company (IA)
Union Electric Company (IL)
Union Electric Company (MO)
Union Light, Heat & Power Company
United Illuminating Company
*Upper Peninsula Power Company
Utah Power & Light Company (ID)
Utah Power & Light Company (UT)
Utah Power & Light Company (WY)
Virginia Electric & Power Company (NC)
Virginia Electric & Power Company (VA)
Virginia Electric & Power Company (WV)
Washington Water Power Company (ID)
Washington Water Power Company (MT)
Washington Water Power Company (WA)
West Penn Power Company
West Texas Utilities Company
Western Massachusetts Electric Company
Western Power Division of Central Telephone & Utilities Corporation (CO)
Western Power Division of Central Telephone & Utilities Corporation (KS)
Wheeling Electric Company
Wisconisn Electric Power Company (MI)
Wisconisn Electric Power Company (WI)
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned
*Albany Water, Gas & Light Commission (GA)
Anaheim—Electric Division (CA)
*Anchorage Municipal Light & Power Department (AK)
Austin Electric Department (TX)
*Bristol Tennessee Electric System (TN)
*Burbank Public Service Department (CA)
Central Lincoln People's Utility District (OR)
Chattanooga Electric Power Board (TN)
*Clarksville Department of Electricity (TN)
*Clatskanie People's Utility District (OR)
*Cleveland Division of Light & Power (OH)
*Cleveland Utilities (TN)
Colorado Springs Department of Public Utilities (CO)
Decatur Electric Department (AL)
*Dothan Electric Department (AL)
Eugene Water & Electric Board (OR)
Fayetteville Public Works Commission (NC)
*Florence Electricty Department (AL)
*Gainesville Regional Utilities (FL)
Garland Electric Department (TX)
*Glendale Public Service Department (CA)
*Greeneville Light & Power System (TN)
*Greenville Utilities Commission (NC)
Huntsville Electric System (AL)
Imperial Irrigation District (CA)
*Independence Power & Light Department (MO)
Jackson Utility Division—Electric Department (TN)
Jacksonville Electric Authority (FL)
Johnson City Power Board (TN)
Kansas City Board of Public Utilities (KS)
Knoxville Utilities Board (TN)
Lafayette Utilities System (LA)
Lakeland Department of Electricity and Water (FL)
Lansing Board of Water & Light (MI)
*Lenoir City Utilities Board (TN)
Lincoln Electric System (NE)
Los Angeles Department of Water and Power (CA)
*Lower Colorado River Authority (TX)
*Lubbock Power & Light (TX)
Memphis Light, Gas & Water Division (TN)
Modesto Irrigation District (CA)
*Muscatine Power & Water (IA)
Nashville Electric Service (TN)
Nebraska Public Power District (NE)
Nebraska Public Power District (SD)
*North Little Rock Electric Department (AR)
Omaha Public Power District (IA)
Omaha Public Power District (NE)
Orlando Utilities Commission (FL)
*Owensboro Municipal Utilities (KY)
Palo Alto Electric Utility (CA)
Pasadena Water & Power Department (CA)
*Power Authority of New York (NY)
*Port Angeles Light & Water Department (WA)
Public Utility District No. 1 of Benton County (WA)
Public Utility District No. 1 of Chelan County (WA)
Public Utility District No. 1 of Clark County (WA)
Public Utility District No. 1 of Cowlitz County (WA)
*Public Utility District No. 1 of Douglas County (WA)
*Public Utility District No. 1 of Franklin County (WA)
Public Utility District of Grant County (WA)
Public Utility District No. 1 of Grays Harbor County (WA)
*Public Utility District No. 1 of Lewis County (WA)
Public Utility District No. 1 of Snohomish County (WA)
Puerto Rico Electric Power Authority
*Richland Energy Services Department (WA)
Richmond Power & Light (IN)
Riverside Public Utilities (CA)
*Rocky Mount Public Utilities (NC)
Sacramento Municipal Utility District (CA)
Salt River Project Agricultural Improvement and Power District (AZ)
San Antonio City Public Service Board (TX)
Santa Clara Electric Department (CA)
Seattle City Light Department (WA)
South Carolina Public Service Authority
Springfield City Utilities (MO)
*Springfield Utilities Board (OR)
Springfield Water, Light & Power Department (IL)
Tacoma Public Utilities—Light Division (WA)
Tallahassee, City of (FL)
*Turlock Irrigation District (CA)
Vernon Municipal Light Department (CA)
*Wilson Utilities Department (NC)

Rural Electric Cooperatives
*Anoka Electric Cooperative (MN)
*Appalachian Electric Cooperative (TN)
Chugah Electric Association (AK)
Clay Electric Cooperative (FL)
Cumberland Electric Membership Corporation (TN)
*Duck River Electric Membership Corporation (TN)
*First Electric Cooperative Corporation (AR)
*Flint Electrical Membership Corporation (GA)
*Four County Electric Power Association (MS)
*Gibson County Electric Membership Corporation (TN)
Green River Electric Corporation (KY)
Henderson-Union Rural Electric Cooperative Corporation (KY)
*Jackson Electric Membership Corporation (GA)
Lee County Electric Cooperative (FL)
*Meriwether Lewis Electric Cooperative (TN)

Middle Tennessee Electric Membership Corporation (TN)
*Moon Lake Electric Association (UT)
North Georgia Electric Membership Corporation (GA)
*Pedernales Electric Cooperative (TX)
*Pennyrile Rural Electric Cooperative Corporation (KY)
*Prince William Electric Cooperative (VA)
*Singing River Electric Power Association (MS)
*South Central Power Company (OH)
Southern Maryland Electric Cooperative, Inc. (MD)
*Southern Pine Electric Power Association (MS)
Southwest Louisiana Electric Membership Corporation (LA)
*Southwest Tennessee Electric Membership Corporation (TN)
*Tri-County Electric Membership Corporation (TN)
*Tri-County Electric Association , Inc. (WY)
*Umatilla Electric Cooperative Association (OR)
*Upper Cumberland Electric Membership Corporation (TN)
Volunteer Electric Cooperative (TN)
*Warren Rural Electric Cooperative Corporation (KY)
*West Kentucky Rural Electric Cooperative Corporation (KY)
*Withlacoochee River Electric Cooperative (FL)

Federal Agencies

*Bonneville Power Administration (OR)
*Tennessee Valley Authority (TN)
*Western Area Power Administration (CO)

Gas Utilities

All gas utilities listed below had natural gas sales, for purposes other than resale, in excess of 10 billion cubic feet in 1976, 1977, 1978 or 1979 and are covered by PURPA Title III and NECPA Titles II and VII. Utilities marked (*) do not have residential or commercial sales, and therefore, are not covered by NECPA Title II or VII. The utilities listed more than once have sales in more than one State and those States are indicated by abbreviations in parenthses.

Investor-Owned

Alabama Gas Corporation
Alaska Gas & Service Company
Anadarko Production Company
Arizona Public Service Company
Arkansas-Louisiana Gas Company (AR)
Arkansas-Louisiana Gas Company (KS)
Arkansas-Louisiana Gas Company (LA)
Arkansas-Louisiana Gas Company (OK)
Arkansas-Louisiana Gas Company (TX)
Arkansas-Oklahoma Gas Corporation (AR)
Arkansas-Oklahoma Gas Corporation (OK)
Arkansas Western Gas Company
Associated Natural Gas Company (AR)
Associated Natural Gas Company (MO)
Atlanta Gas Light Company
Baltimore Gas & Electric Company
Bay State Gas Company
Boston Gas Company
Brooklyn Union Gas Company
Carnegie Natural Gas Company
*Carolina Pipeline Company
Cascade Natural Gas Corporation (OR)
Cascade Natural Gas Corporation (WA)
Central Illinois Light Company
Central Illinois Public Service Company
Chattanooga Gas Company (GA)
Chattanooga Gas Company (TN)
Cheyenne Light, Fuel and Power Company
Cincinnati Gas and Electric Company
Cities Service Gas Company (covered by NECPA only)
City Gas Company of Florida
Columbia Gas of Kentucky, Inc.
Columbia Gas of New York, Inc.
Columbia Gas of Ohio, Inc.
Columbia Gas of Pennsylvania, Inc.
Columbia Gas of Virginia, Inc.
Columbia Gas of West Virginia, Inc.
Commonwealth Gas Company
Connecticut Light & Power Company
Connecticut Natural Gas Corporation
Consolidated Edison Company of New York, Inc.
Consolidated Gas Supply Corporation
Consumers Power Company
Dayton Power & Light Company
Delmarva Power & Light Company (DE)
East Ohio Gas Company
Elizabethtown Gas Company
Entex Inc. (LA)
Entex Inc. (MS)
Entex Inc. (TX)
Equitable Gas Company (PA)
Equitable Gas Company (WV)
Gas Company of New Mexico
Gas Light Company of Columbus
Gas Service Company (KS)
Gas Service Company (MO)
Gas Service Company (NE)
Gas Service Company (OK)
Greeley Gas Company (CO)
Greeley Gas Company (KS)
Greeley Gas Company (MN)
Gulf States Utilities Company
Illinois Power Company
Indiana Gas Company
Inland Gas Company
Inter City Gas Limited
Intermountain Gas Company
Interstate Power Company (IA)
Interstate Power Company (IL)
Interstate Power Company (MN)
Iowa Electric Light & Power Company (CO)
Iowa Electric Light & Power Company (IA)
Iowa Electric Light & Power Company (MN)
Iowa Electric Light & Power Company (NE)
Iowa-Illinois Gas & Electric Company (IA)
Iowa-Illinois Gas & Electric Company (IL)
Iowa Power & Light Company
Iowa Public Service Company (IA)
Iowa Public Service Company (NE)
Iowa Public Service Company (SD)
Iowa Southern Utilities Company
Kansas-Nebraska Natural Gas Company (CO)
Kansas-Nebraska Natural Gas Company (KS)
Kansas-Nebraska Natural Gas Company (NE)
Kansas-Nebraska Natural Gas Company (WY)
Kansas Power & Light Company
Kokomo Gas & Fuel Company
Laclede Gas Company Consolidated
Lone Star Gas Company (OK)
Lone Star Gas Company (TX)
Long Island Lighting Company
Louisiana Gas Service Company
Louisville Gas & Electric Company
Lowell Gas Company
Madison Gas & Electric Company
Michigan Consolidated Gas Company
Michigan Gas Utilities Company
Michigan Power Company
Minnesota Gas Company (IA)
Minnesota Gas Company (MN)
Minnesota Gas Company (NE)
Minnesota Gas Company (SD)
Mississippi Valley Gas Company
Missouri Public Service Company
Mobile Gas Service Corporation
Montana-Dakota Utilities Company (MN)
Montana-Dakota Utilities Company (MT)
Montana-Dakota Utilities Company (ND)
Montana-Dakota Utilities Company (SD)
Montana-Dakota Utilities Company (WY)
Montana Power Company
Mountain Fuel Supply Company (UT)
Mountain Fuel Supply Company (WY)
Nashville Gas Company
National Fuel Gas Distribution Corporation (NY)
National Fuel Gas Distribution Corporation (PA)
National Gas and Oil Company
New Bedford Gas and Edison Light Company
New Jersey Natural Gas Company
New Orleans Public Service, Inc.
New York State Electric & Gas Corporation
Niagara Mohawk Power Corporation
North Carolina Natural Gas Corporation
North Central Public Service Company (IA)
North Central Public Service Company (MN)
North Shore Gas Company
Northern Illinois Gas Company
Northern Indiana Public Service Company
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas Company, Division of Internorth, Inc. (CO)
Peoples Natural Gas Company, Division of Internorth, Inc. (IA)
Peoples Natural Gas Company, Division of Internorth, Inc. (KS)
Peoples Natural Gas Company, Division of Internorth, Inc. (MI)
Peoples Natural Gas Company, Division of Internorth, Inc. (MN)
Peoples Natural Gas Company, Division of Internorth, Inc. (MO)

Peoples Natural Gas Company, Division of Internorth, Inc. (NE)
Peoples Natural Gas Company, Division of Internorth, Inc. (TX)
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
Northern Indiana Public Service Company
Northern Natural Gas Company (KS)
Northern Natural Gas Company (NE)
Northern States Power Company (MN)
Northern States Power Company (ND)
Northern States Power Company (WI)
North Penn Gas Company
Northwest Natural Gas Company (OR)
Northwest Natural Gas Company (WA)
Northwestern Public Service Company (NE)
Northwestern Public Service Company (SD)
Oklahoma Natural Gas Company
Orange & Rockland Utilities
Pacific Gas & Electric Company
Panhandle Eastern Pipeline Company (IL)
Panhandle Eastern Pipeline Company (KS)
Pennsylvania Gas & Water Company
Peoples Gas, Light and Coke Company
Peoples Gas System
Peoples Natural Gas Company
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Peoples Natural Gas
Philadelphia Electric Company
Piedmont Natural Gas Company (NC)
Piedmont Natural Gas Company (SC)
Pioneer Natural Gas Company
Providence Gas Company
Public Service Company of Colorado
Public Service Company, Inc. of North Carolina
Public Service Electric and Gas Company
Rochester Gas & Electric Corporation
San Diego Gas & Electric Company
South Carolina Electric & Gas Company
South Jersey Gas Company
Southeastern Michigan Gas Company
Southern California Gas Company
Southern Connecticut Gas Company
Southern Indiana Gas & Electric Company
Southern Union Gas Company (AZ)
Southern Union Gas Company (OK)
Southern Union Gas Company (TX)
Southwest Gas Corporation (AZ)
Southwest Gas Corporation (CA)
Southwest Gas Corporation (NV)
Terre Haute Gas Corporation
T. W. Phillips Gas and Oil Company
UGI Corporation
Union Gas System, Inc. (KS)
Union Gas System, Inc. (OK)
Union Light, Heat & Power Company (KY)
Virginia Electric & Power Company
Washington Gas Light Company (DC)
Washington Gas Light Company (MD)
Washington Gas Light Company (VA)
Washington Natural Gas Company
Washington Water Power Company (ID)
Washington Water Power Company (WA)
West Ohio Gas Company
Western Kentucky Gas Company
Wisconsin Fuel & Light Company
Wisconsin Gas Company
Wisconsin Natural Gas Company
Wisconsin Power & Light Company
Wisconsin Public Service Corporation (MI)
Wisconsin Public Service Corporation (WI)

Publicly-Owned

Citizens Gas & Coke Utility (IN)
City of Richmond, Virginia, Department of Public Utilities (VA)
City Public Service Board (San Antonio) (TX)
Colorado Springs Department of Public Utilities (CO).
Long Beach Gas Department (CA)
Memphis Light, Gas & Water Division (TN)
Metropolitan Utilities District of Omaha (NE)
Philadelphia Gas Works (PA)
Springfield City Utilities (MO)

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Part IX

Environmental Protection Agency

Regional Consistency

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 56

[AD-FRL 1589-3]

Regional Consistency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This final rulemaking sets forth Regional Consistency regulations which were proposed on March 9, 1979 (44 FR 27558). EPA is required to promulgate regulations for this purpose under Section 301(a)(2) of the Clean Air Act (Act). The intended effect of this action is to assure fair and consistent application of rules, regulations and policy throughout the country by assuring that the actions of each individual EPA Regional Office is consistent with one another and national policy.

DATES: These regulations take effect February 23, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Creekmore, Standards Implementation Branch, Control Programs Development Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711 (919-541-5437).

Availability of Related Information: A docket (No. OAQPS 79-11) containing all supporting information used by EPA in developing the regulations is available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1979 (44 FR 13043), EPA proposed regulations for Regional Consistency. These regulations were required under Section 301(a)(2) of the Act as amended on August 7, 1977. Section 301(a)(2) reads in part as follows:

> (2) Not later than one year after the date of enactment of this paragraph, the Administrator shall promulgate regulations establishing general applicable procedures and policies for Regional Offices and employees (including the Regional Administrator) to follow. * * * Such regulations shall be designed—
>
> (A) To assure fairness and uniformity in the criteria, procedures, and policies applied by the various Regions in implementing and enforcing the Act;
>
> (B) To assure at least an adequate quality audit of each State's performance and adherence to the requirements of this Act in implementing and enforcing the Act, particularly in the review of new sources and in enforcement of the Act; and
>
> (C) To provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the Act.

The proposed regulations consisted of the following major provisions:

1. A provision requiring EPA to include in rules, regulations and program directives a mechanism for assuring consistency of application among the Regional Offices. This provision applied to rules, regulations, and program directives that EPA issued after August 6, 1977.
2. A provision requiring the Regional Offices to follow those mechanisms.
3. A provision requiring the Regional Offices to obtain Headquarters concurrence on significant interpretations of the Act or rules, regulations, or program directives.
4. Revised procedures for timely and more comprehensive distribution of policy and guidance.
5. Provisions for annual audits of the performance of EPA Regional Offices and State and local agencies in implementing and enforcing the Act.

Since the proposal, EPA has reevaluated its approach to the Regional Consistency requirements. The major aim in this reevaluation was to reduce resources necessary to implement the requirements by making use of existing consistency mechanisms whenever possible. As a result, the regulations promulgated below are altered to reduce the resources needed to implement consistency programs. The alterations do not affect the thrust of the Regional Consistency regulations as proposed; that is, the regulations being promulgated today still focus attention on identifying, preventing, and resolving regional inconsistencies.

The regulations being promulgated result in an expansion of existing mechanisms to accomplish the same purposes as the regulations originally proposed. The mechanisms utilized to promote regional consistency will include Headquarters overview of specific regional program activities, periodic EPA interregional meetings, and special reviews of controversial State Implementation Plan (SIP) revisions. The State grant performance evaluations will assure an adequate review of the States adherence to the requirements of the Act.

Support for these types of revisions came from the public comments on the proposed regulations. Of the eighteen public comments received, four felt that the proposal was too elaborate and inflexible. Most commenters agreed that the major role of the regulations should be to identify inconsistencies and resolve them as quickly as possible. Major consistency problems identified involved modeling practices, new source reviews, and control strategy approvals for SIPs. These problems can be identified and resolved without resorting to the involved administrative procedures contained in the proposal.

Differences Between the Final Rule and Proposal

1. Section 56.4 of the proposal, "Mechanisms for fairness and uniformity—Responsibilities of Headquarters employees," proposed to require EPA to include in rules, regulations, and program directives a mechanism for assuring consistency of application among the Regional Offices. In addition, this section applied to all rules, regulations and program directives that EPA issued after August 6, 1977. The promulgated regulations below limit the applicability of § 56.4 to rules and regulations under Parts 51 and 58* proposed or promulgated after the effective date of these regulations. Emphasis will be placed on SIP issues. Mechanisms are not required for New Source Performance Standards (NSPS) or National Emission Standards for Hazardous Air Pollutants (NESHAPS). Regulations for NSPS and NESHAPS are very detailed and involve extensive support documentation. They apply to specific source categories. In addition, initial implementation of these standards is coordinated closely with Headquarters. Headquarters periodically compiles a summary of problems associated with the initial implemenation and makes the summaries available to the Regional Offices for their guidance. Conversely, SIP related requirements are general and cover a wide range of actions. For example, SIP control strategy development encompasses several pollutants and hundreds of distinct sources.

Mechanisms are not required for program directives because they are themselves mechanisms EPA uses to foster consistent policy applications. Thus, EPA considers it redundant to require program directives to contain consistency mechanisms and that provision of the proposed regulation has been eliminated. The Administrator also eliminated the proposal requirement that EPA retroactively develop

* Part 51: Requirements for Preparation, Adoption, and Submittal of Implementation Plans.
Part 58: Ambient Air Quality Surveillance.

mechanisms for regulations issued after August 6, 1977. Any inconsistencies fostered by regulations issued prior to the effective date of these regulations can be resolved through existing mechanisms. Also, retroactive action would require a major effort at a time when EPA resources are already heavily committed.

EPA has eliminated the requirement proposed in Section 56.4 that negative declarations be included with relevant rulemaking. The regulation now provides that negative declarations be included in the supporting documentation or in the docket. Entering negative declarations in the docket will better preserve the record explaining why EPA found it unnecesssary to provide mechanisms to ensure consistent application of some regulations.

2. Section 56.5 of the proposed regulation, "Mechanisms for fairness and uniformity—Responsibilities of Regional Office employees," required the Regional Offices to obtain written Headquarters concurrence on significant interpretations of the Act or rules, regulations or program directives. The regulations promulgated below require only that the Regional Offices "seek concurrence from the appropriate EPA Headquarters office on significant interpretations of the Act." For example, the Regional Offices would typically seek concurrence on issues involving the following topics from the Headquarters office indicated:

a. Legal Issues—Office of General Counsel, Associate General Counsel, Air, Noise, and Radiation Division, Washington, D.C.

b. Enforcement Issues.

i. Stationary Sources—Director, Division of Stationary Source Enforcement, Washington, D.C.

ii. Mobile Sources—Director, Field Operations and Support Division, Washington, D.C.

c. State Implementation Plans.

i. General Guidance—Director, Control Progams Development Division, Research Triangle Park, N.C.

ii. Transportation Plans—Director, Office of Transportation and Land Use Planning, Washington, D.C.

iii. Inspection/Maintenance—Director, Emission Control Technology Division, Ann Arbor, Michigan.

This is not meant to affect those specific situations where EPA presently requires concurrence, or may find it necessary to require concurrence in the future. The revised requirement is not as burdensome as the original proposal and is not as likely to unnecessarily delay Regional Offices in taking action, yet should be effective in assuring consistency.

3. Section 56.6 of the proposed regulations "Dissemination of policy and guidance," required a comprehensive information system to be implemented by the Assistant Administrator for Air, Noise, and Radiation. The regulations below decentralize the dissemination of policy and guidance to several program offices and reduce the number of summaries, etc., needed. Program offices must compile documents containing relevant EPA program directives and guidance and make them available to the public. The program offices must also update the compilations. The revised § 56.6 significantly reduces the resources required to implement the proposed regulations while providing essentially similar guidance dissemination programs. While these regulations require a less complex dissemination system than originally proposed, EPA policy and guidance will be much more available to the State and local agencies and to the public than it is at present.

4. Section 56.7 of the proposed regulation, Regional Office audits, has been deleted. EPA feels that there are a number of alternative ways to promote regional consistency including Headquarter's review of specific regional programs, special review of controversial SIP actions, regular interregional meetings, and guidance dissemination from Headquarters. No audit manuals or annual audits will be necessary to carry out these regulations. EPA's existing normal/special action classification system provides special review of controversial SIPs. Where consistency issues are involved, the SIP revision will be classified as special action. This means that the revision undergoes a more detailed evaluation by the various EPA program and staff offices than do normal actions. In addition, EPA schedules regular interregional meetings which serve as a forum to resolve major inconsistencies. Finally, the Headquarters guidance dissemination program will make policy and guidance material more widely and immediately available to the States and local agencies that are to implement many of the policies EPA originates. Thus, formalized, existing mechanisms, together with an expanded policy guidance system and Headquarters overview, can be used to achieve the same goals as the Regional Office audit with much less resource expenditure.

5. Section 56.8 of the proposed regulations, State and local agency performance audits, has been rewritten. The existing Section 105 grant performance evaluation requirements together with other program reviews are substituted for the separate State agency audit originally proposed in §56.8. The 105 grant requirements (40 CFR 35, Subpart B, Program Grants) provide for air program assistance grants for prevention and control of air pollution at the State, interstate, or local level. For this program, EPA develops major program elements and outputs through the Zero Based Budget (ZBB) process. The ZBB process is also used to develop performance guidance which determines the programs EPA will emphasize in grant assistance. The grant procedures require EPA Regional Administrators to prepare an annual Agency evaluation report which describes program performance of the grantees for the previous year. Where appropriate, the report contains recommendations for upgrading current agency operations and provides guidance for development of upcoming grant applications. The regulations promulgated today require EPA Regional Administrators to notify the public of the availability of the evaluation report through a **Federal Register** notice. Heretofore, EPA, while informally carrying out the grant regulations, has not always prepared a formal report of its evaluations, or if so, has not deliberately made the report available to the public. Under the regulations promulgated today, EPA will formalize the reports prepared under the grant procedures to satifsfy the intent of Congress for an audit of State agency performance.

The regulation promulgated below appears as a new Part 56 of Title 40, Chapter I, Subchapter C. In summary, the regulation's main features are as follows:

1. A provision requiring EPA to include in rules and regulations related to Parts 51 and 58, a mechanism for assuring consistency of application among the Regional Offices.

2. A provision requiring the Regional Offices to follow those mechanisms.

3. A provision requiring the Regional Offices to consult with appropriate EPA Headquarters offices on significant interpretations of the Act or rules, regulations, or program directives.

4. Revised procedures for timely and more comprehensive distribution of policy and guidance.

5. Provisions for annual evaluations of the performance of State and local agencies through the existing 105 grant evaluation mechanism.

Public Comments

During the period March 9, 1979 to June 20, 1979, EPA received 18 letters

addressing the proposed regulations. EPA held a public hearing in Washington, D.C., on May 21, 1979, but no comments were presented. The sources of the written comments were as follows:

Source	Number
State air pollution control agencies	7
Regional air pollution control agencies	2
Counties	1
Public utilities	2
Industries	4
Trade association (organic chemicals)	1
Consultant	1
Total	18

Some commenters felt the regulation would restrict Regional flexibility and adversely affect EPA's responsiveness to Regional concerns and local problems. Other commenters felt that the regulations should include specific measures to assure consistency and not depend on the audit manuals for these requirements. The industrial commenters (utilities, trade association, consultant) were concerned more with the flexibility issue, while the State and Regional air pollution control agencies were divided in their opinion.

The discussion of the public comments has been broken into seven categories. The first category discusses comments on and changes in the overall concept of the regulations. The next six categories discuss comments on and changes in individual sections of the regulations.

1. Comments on the Overall Concept of the Regulations

1.1 *Comment:* Several commenters expressed fear that the regulations were too elaborate, and would restrict Regional flexibility. They felt that Regional Administrators should have the latitude to use their experience and judgment under broad guidelines and performance criteria. One commenter was particularly concerned about the provisions in Section 56.5 which requires a responsible Regional official to seek concurrence on interpretations of the Act when such interpretations may result in inconsistent application. The commenter felt that current Regional Office responsiveness, accessibility, and independence to react quickly to local problems would be sacrificed if Regional Office employees must obtain written concurrence from Headquarters on frequent occasions.

Response: As discussed previously, EPA is sensitive to these issues and the regulations below simplify the proposed consistency requirements to reduce cost and increase Regional flexibility. They replace the new mechanisms required in the proposal with existing mechanisms such as State 105 grant evaluations, guidance dissemination, review of controversial SIPs, and special program evaluations as deemed necessary by Headquarters. In addition, § 56.5 has been revised to require that the responsible Regional official no longer needs such written concurrence but shall "seek concurrence from the appropriate EPA Headquarters office" on interpretations of the Act potentially involving consistency problems.

1.2 *Comment:* One commenter felt that the proposed regulation included limited reference to workshops in Denver, Atlanta, Dallas, and Boston, even though the preamble states that they were developed largely from suggestions developed at the public workshop.

Response: EPA held the workshops to obtain a broad spectrum of public comment on the direction the Regional Consistency regulations should take. Issues 1–15 of the preamble to the proposal discuss the major issues raised in workshops and not incorporated into the proposed regulations.

1.3 *Comment:* Another commenter felt that EPA brushes aside timely consideration of organizational differences as a source of inconsistency from one Region to another. The inability of one Region to deal with another because of differing organizational structure is a major barrier.

Response: EPA has regular interregional meetings of policy level managers. A major purpose of these meetings is to identify and resolve Regional inconsistencies. As a result of the regulations promulgated today, more emphasis will be placed on consistency problems. The Agency has also established staff offices which specialize in Headquarters—Regional Office relations. The Office of Regional Programs under the Office of Air Quality Planning and Standards in Durham, North Carolina, is an example. It identifies potential consistency problems with emphasis on Regional Office implementation of Headquarters' guidance. Another example is the Office of Regional Liaison in Washington, D.C., which deals with Regional/Headquarters issues and is in the Office of the Administrator.

1.4 *Comment:* One commenter felt that such consideration of fairness and uniformity or flexibility/consistency at the time of rulemaking as required by § 56.4, is appropriate, but was concerned about provisions for such consideration as may be needed at later dates as the programs are being implemented.

Response: The reviews required by the program grant requirements referenced in § 56.7 will be repeated annually, and they should assure consistency over the long term. In addition, EPA schedules regular interregional meetings to discuss current issues. Where problems arise that cannot be resolved through these meetings, Headquarters develops guidance as necessary.

1.5 *Comment:* The preamble of the proposal put forth an example mechanism for assuring consistency of regulatory application. The example referred to EPA's regulations for prevention of significant deterioration. In the PSD regulation (43 FR 26380), EPA has established a national clearinghouse to assist the Regions and States in determining what constitutes Best Available Control Technology (BACT) or Lowest Achievable Emission Rates (LAER). One commenter felt that the clearinghouse idea would lead to EPA collecting control information from various sources and imposing the most stringent measure that one particular source might meet across the board. Another commenter felt that the clearinghouse idea circumvented the Clean Air Act by determining BACT and LAER with no provision for public comment.

Response: EPA intends that BACT and LAER determinations be made on a case-by-case basis. Thus, the various reviewing agencies will always consider individual situations in applying BACT and LAER. In addition, EPA is distributing a guidance document to assist reviewing agencies in implementing these requirements.

EPA feels that adequate opportunities for public comment have been provided in establishing BACT and LAER. The regulations in each State making reviews for BACT and LAER have been subject to public comment. EPA requires under § 51.18(h), "Review of New Sources and Modifications," that States obtain public comment on permit applications for major new sources or modifications. The public can then comment on any LAER determinations therein. In addition, under §51.24(r), "Prevention of Significant Deterioration of Air Quality ," those States granting prevention of significant deterioration permits are required to make available to the public information on permit applications from major sources. Such information would allow the public to comment on any BACT determinations therein. Finally, the party most affected and interested in BACT and LAER determinations, the source itself, has ample opportunity to express its

opinions to the regulatory agency concerning such determinations.

For the States where EPA implements their new source review programs, § 52.21(r), "Prevention of Significant Deterioration of Air Quality," provides for public access to permit applications.

1.6 *Comment:* One commenter felt that a basic reason for inconsistencies was that the Act allowed States to establish standards more stringent than the national ambient air quality standards.

Response: This comment was discussed in issue number 11 of the preamble to the proposal. EPA's reply remains the same: the Act allows State discretion. These regulations will help insure that departures by the States represent conscious decisions and will help eliminate unintended inconsistencies.

1.7 *Comment:* One commenter focused on possible inconsistencies in EPA's implementation of the air quality standards and PSD requirements. His comments were as follows:

1.7.1 EPA modeling guidance does not provide for regional consistency. Certain models, such as RAM and CRSTER have been applied in similar situations with different results in different Regions. This application has resulted in more stringent regulations in one Region than another.

1.7.2 A uniform averaging period for enforcement of emission limitations should be established.

1.7.3 The ambient air quality standards should be enforced uniformly in all Regions of the country. The PSD increment should not be applied to existing sources in place of the ambient standards.

1.7.4 All changes in EPA procedures which result from the consistency rulemaking should be applied to new analysis and applications only. A cutoff date consistent with the regulation implementation should be specified well in advance in order that diffusion analysis currently in progess would not be invalidated.

Response: With regard to the problem discussed in 1.7.1, EPA is addressing interpretation and application of models through workshops with the Regional Offices. EPA invited modeling experts from State and local agencies, universities, and other organizations to attend these workshops. The first such workshops were held in late 1978. The Summary Report entitled, "Regional Workshops on Air Quality Modeling: A Summary Report," is available through the EPA Regional Offices. Topics involving application of models were addressed and means to improve consistency were considered. EPA held a second workshop in February 1980. The report from that workshop will be available from the Regional Offices in the summer of 1980. More workshops are being planned so that eventually all the problem areas identified can be resolved.

EPA published notice of an action, entitled "Regulation of Large Coal-Fired Boilers for SO_2 Emissions," (45 FR 9994) on February 14, 1980. The issue of appropriate averaging times may be examined in this rulemaking.

As for issue 1.7.3, these regulations will promote uniform enforcement of emission limitations developed to attain ambient air quality standards. The PSD increment is only applied to existing sources when required by the Act and EPA regulations.

With regard to the issue in 1.7.4, if new diffusion analyses/or applications are developed in the future which are more accurate than existing techniques, there is little choice than to apply these techniques. However, the development of new techniques does not itself require that EPA reevaluate all previous actions.

1.8 *Comment:* One commenter reiterated a comment made in the preproposal meetings that EPA's monitoring requirements do not provide for a consistent data base. The commenter did not feel that monitoring regulations promulgated on May 10, 1979 (44 Fr 27558), resolved this problem. The commenter felt that regional consistency will be difficult to attain because the existing regulations allow States to use their own mechanisms to determine attainment, and allow many areas to go unclassified because of lack of monitoring data.

Response: The ambient air monitoring, data reporting, and surveillance regulations referred to above do allow States a certain amount of flexibility with regard to monitoring requirements. However, they contain requirements which provide for uniform data quality and consistency in area coverage throughout the country. The subject regulations require the States to meet certain criteria which consist of approved monitoring devices, quality assurance, instrument siting specifications, and sampling intervals. Adherence to these criteria will assure comparable data from all monitoring stations of certain minimum, acceptable quality. The stations in the network will be termed State and Local Air Monitoring Stations (SLAMS). The number and location of the SLAMS will be jointly determined by the State and Regional Office as data needs dictate.

The subject regulations require the States to designate certain of the SLAMS as National Air Monitoring Stations (NAMS). EPA specifies the numbers and locations for NAMS in the major population areas of the country and requires a more frequent data reporting interval. The concept of NAMS is designed to provide data for national policy analysis/trends and for reporting to the public on major metropolitan areas. Existing plans are to establish the following approximate number of NAMS throughout the United States: particulate matter, 636; sulfur dioxide, 224; carbon monoxide, 121; ozone, 208; nitrogen dioxide, 65; and lead, 100.

Both the monitoring criteria and the NAMS provisions of the regulations will result in much more consistent air quality monitoring and data availability than has occurred in the past. The future outlook for monitoring is for continued collection of high quality data and assessment of networks to maintain their responsiveness to data needs.

2. Comments on Section 56.1, Definitions

2.1 *Comment:* Section 56.1, "Program Directive," is defined to exclude "an interpretation or clarification of existing rules, regulations, or program directives." One commenter was concerned that under this definition, the offset interpretative ruling would not be covered by Regional Consistency.

Response: Inclusion of the word "interpretation" was confusing to some persons. The intent was to exclude short memos "clarifying" policy or regulations not major policy documents like the offset policy rulings. To resolve this problem, the entire exclusion has been deleted from the definition.

3. Comments on Section 56.3, Policy

3.1 *Comment:* One commenter was concerned that the regulation does not contain a scheme to correct inconsistencies once they have been identified.

Response: Under § 56.4 each appropriate SIP related rule must include a mechanism to assure that the regulation is implemented fairly and consistently. EPA defines "mechanism" in § 56.1 as "an administrative procedure, guideline, manual, or written statement." The mechanism is intended to help identify and correct inconsistencies. Once EPA identifies the problem, several methods are available to correct the inconsistency. An administrative procedure such as EPA's special action review of SIP rulemaking can be an effective tool to correct inconsistencies. The appropriate Headquarters review office can nonconcur on the regulatory package and ask the author to revise it. Where the issue is related to inconsistent use of guidelines, revision to the appropriate guideline should correct inconsistencies.

For example, consistency problems with the use of the RAM and CRSTER diffusion models (see Section 1.7.1) have been resolved by revising the appropriate EPA guideline.

4. Comments on Section 56.4, Mechanisms for Fairness and Uniformity—Responsibilities of Headquarters

4.1 *Comment:* One commenter felt that the regulations should specifically not exclude actions covered under 5 U.S.C. 553 such as: "interpretative rules, general statements of policy, or rules of agency organization, procedures or practice," or rules that require no prior notice because this would be "impractical, unnecessary, or contrary to the public interest."

Response: EPA feels that interpretative rules and general statements of policy normally serve as consistency mechanisms in themselves. That is, such actions provide guidance in dealing with a variety of issues, including consistency issues. Thus, requiring mechanisms for these actions is unnecessary.

4.2 *Comment:* One commenter felt that a negative determination under Section 56.4(d) of the proposed regulations should be reviewable as a final Agency action under Section 307 of the Act.

Response: EPA believes that negative determinations are not reviewable as final Agency actions.

4.3 *Comment:* One commenter felt that an appeals board or appeals mechanism should be established to allow a non-judicial review of Regional Office decisions.

Response: This comment was discussed under issue number 8 of the preamble to the March 9, 1979, proposal. EPA feels that establishment of an appeals board would create another level of review and would be less efficient than the proposed scheme in minimizing inconsistencies among the Regional Offices.

5. Comments on Section 56.5, Mechanisms for Fairness and Uniformity—Responsibilities of Regional Office Employees

5.1 *Comment:* One commenter felt that § 56.5 should be expanded to provide that a copy of correspondence covering a judgment decision should be forwarded to the next higher Headquarters level for review regardless of the decision.

Response: EPA does not have the resources to review all regional correspondence and determinations made by the Regional Offices. EPA does hold periodic interregional staff meetings to familiarize regional people with the actions of other Regional Offices and review national policy. Also, Headquarters coordinates closely with the Regional Offices when implementing major regulations and requirements.

5.2 *Comment:* To ensure that the consistency that is to be achieved among Regions is also consistent with the law and with Agency policy, one commenter felt that § 56.5(a) should be expanded to add, between "consistent with" and "the activities * * * " the words: "the Act and Agency policy as set forth in Agency rules and program guidance documents, and with * * *"

Response: EPA feels the comment has merit and the suggested revision has been made in principle.

6. Comments on 56.6, Dissemination of Policy and Guidance

6.1 *Comment:* One commenter felt that provisions should be made to insure that affected industries and the public are provided with timely notice of and access to any changes or revisions made in EPA policy.

Response: § 56.6(a) requires appropriate EPA program offices to develop air programs policy and guidelines systems and a procedure to update them. Also, they must distribute these materials to the Regional Offices and State and local agencies, and make them available to the public. This should provide a timely notice of any changes in EPA policy. In addition, many documents, principally guidelines, may be purchased through the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

6.2 *Comment:* One commenter felt that EPA should (1) include new source review decisions as part of the air program policy and guidance material to provide for ready comparisons from State to State, and (2) establish a common permit format for all States.

Response: EPA has set up a clearinghouse for BACT/LAER determinations and has circulated a compilation of BACT/LAER determinations in a guidance book. This will provide for ready comparisons of BACT/LAER determinations from State to State. Also, on May 19, 1980 (45 FR 33290), EPA promulgated regulations to speed up and simplify the process of obtaining environmental permits through "permit consolidation." A key aspect of this effort is the use of a simplified form to apply for permits under a number of different EPA programs. However, many States operate new source review programs within the framework of approved SIPs. While EPA supports a common permit format, the Clean Air Act does not require the States to adopt such a format. Thus, permit consolidation is optional on the part of the States with regard to new source review programs.

7. Comments on 56.7, Regional Office Audits and 56.8, State and Local Agency Performance Audits

Most of the comments on §§ 56.7 and 56.8 centered around issues such as: (1) the administrative requirements are too elaborate and detailed, (2) the yearly audits were too frequent, (3) public comment should be allowed on the draft audit reports, and (4) non-EPA employees should be allowed on the EPA audit teams and advisory committees. As discussed under the Background section, EPA agrees that the proposed §§ 56.7 and 56.8 requirements are too elaborate and detailed.

The regulations promulgated today delete § 56.7 and substitute the Section 105 grant evaluation mechanisms for the system of State audits originally proposed under § 56.8 The development of audit manuals and audit reports as envisioned in the proposal are too resource intensive. As explained in the Background section of the preamble, regional inconsistencies can be adequately identified by formalizing existing mechanisms without a major new administrative effort.

Environmental, Economic, and Energy Impact Assessments

EPA has classified this regulation as a "significant-routine" action in accordance with guidance contained in the May 29, 1979, **Federal Register**, "Improving Environmental Regulations; Final Report Implementing E.O. 12044," (44 FR 30988). Thus, EPA has prepared no environmental, economic, or energy impact assessments. The regulations should result in more consistent application throughout the country of air pollution control requirements. They will tend to preclude economic inequities because of varying interpretations of the Act's requirements. There will be no discernible energy impact.

Plan to Evaluate the Effectiveness of Regional Consistency Regulations

Section 2(d)(8) of Executive Order 12044 requires that each new significant regulation have a plan to evaluate its effectiveness. Approximately two years from the date of promulgation, EPA will place a notice in the **Federal Register** soliciting public comment on implementation of the regional consistency regulations. The States and local agencies and the public will be asked to comment on the fairness and uniformity mechanisms, grant audit

report and procedures, and the dissemination of EPA policy guidance. A separate copy of the notice will be sent to all State agencies and major local agencies. These comments will be summarized and published in the Federal Register. A copy of the evaluation plan is available in the docket (OAQPS 79-11).

Dated: December 18, 1980.

Douglas M. Costle,

Administrator.

EPA amends Title 40, Chapter I, Subchapter C, of the *Code of Federal Regulations* by adding a new Part 56 as follows:

PART 56—REGIONAL CONSISTENCY

Sec.

Authority: Section 301(a)(2) of the Clean Air Act as amended (42 USC 7601).

§ 56.1 Definitions.

As used in this part, all terms not defined herein have the meaning given them in the Clean Air Act.

"Act" means the Clean Air Act as amended (42 USC 7401 et seq.).

"Administrator," "Deputy Administrator," "Assistant Administrator," "General Counsel," Associate General Counsel," "Deputy Assistant Administrator," "Regional Administrator," "Headquarters," "Staff Office," "Operational Office," and "Regional Office" are described in Part 1 of this Title.

"Mechanism" means an administrative procedure, guideline, manual, or written statement.

"Program directive" means any formal written statement by the Administrator, the Deputy Administrator, the Assistant Administrator, a Staff Office Director, the General Counsel, a Deputy Assistant Administrator, an Associate General Counsel, or a division Director of an Operational Office that is intended to guide or direct Regional Offices in the implementation or enforcement of the provisions of the Act.

"Responsible official" means the EPA Administrator or any EPA employee who is accountable to the Administrator for carrying out a power or duty delegated under Section 301(a)(1) of the Act, or is accountable in accordance with EPA's formal organization for a particular program or function as described in Part 1 of this Title.

§ 56.2 Scope.

This part covers actions taken by—

(a) Employees in EPA Regional Offices, including Regional Administrators, in carrying out powers and duties delegated by the Administrator under Section 301(a)(1) of the Act; and

(b) EPA employees in Headquarters to the extent that they are responsible for developing the procedures to be employed or policies to be followed by Regional Offices in implementing and enforcing the Act.

§ 56.3 Policy.

It is EPA's policy to—

(a) Assure fair and uniform application by all Regional Offices of the criteria, procedures, and policies employed in implementing and enforcing the Act;

(b) Provide mechanisms for identifying and correcting inconsistencies by standardizing criteria, procedures, and policies being employed by Regional Office employees in implementing and enforcing the Act; and

(c) Insure an adequate quality audit for each State's performance in implementing and enforcing the Act.

§ 56.4 Mechanisms for fairness and uniformity—Responsibilities of Headquarters employees.

(a) The Administrator shall include, as necessary, with any rule or regulation proposed or promulgated under Parts 51 and 58 of this chapter[1] mechanisms to assure that the rule or regulation is implemented and enforced fairly and uniformly by the Regional Offices.

(b) The determination that a mechanism requried under paragraph (a) of this section is unnecessary for a rule or regulation shall be explained in writing by the responsible EPA official and included in the supporting documentation or the relevant docket.

§ 56.5 Mechanisms for fairness and uniformity—Responsibilities of Regional Office employees.

(a) Each responsible official in a Regional Office, including the Regional Administrator, shall assure that actions taken under the Act:

(1) Are carried out fairly and in a manner that is consistent with the Act and Agency policy as set forth in the Agency rules and program directives,

(2) Are as consistent as reasonably possible with the activities of other Regional Offices, and

(3) Comply with the mechanisms developed under § 56.4 of this part.

(b) A responsible official in a Regional Office shall seek concurrence from the appropriate EPA Headquarters office on any interpretation of the Act, or rule, regulation, or program directive when such interpretation may result in inconsistent application among the Regional Offices of the Act or rule, regulation, or program directive.

(c) In reviewing State Implementation Plans, the Regional Office shall follow the provisions of the guideline, revisions to State Implementation Plans—Procedures for Approval/Disapproval Actions, OAQPS No. 1.2-005A, or revision thereof. Where regulatory actions may involve inconsistent application of the requirements of the Act, the Regional Offices shall classify such actions as special actions.

§ 56.6 Dissemination of policy and guidance.

The Assistant Administrators of the Offices of Air, Noise and Radiation, and of Enforcement, and the General Counsel shall establish as expeditiously as practicable, but no later than one year after promulgation of this part, systems to disseminate policy and guidance. They shall distribute material under foregoing systems to the Regional Offices and State and local agencies, and shall make the material available to the public. Air programs policy and guideline systems shall contain the following:

(a) Compilations of relevant EPA program directives and guidance, except for rules and regulations, concerning the requirements under the Act.

(b) Procedures whereby each Headquarters program office and staff office will enter new and revised guidance into the compilations and cause superseded guidance to be removed.

(c) Additional guidance aids such as videotape presentations, workshops, manuals, or combinations of these where the responsible Headquarters official determines they are necessary to inform Regional Offices, State and local agencies, or the public about EPA actions.

§ 56.7 State agency performance audits.

(a) EPA will utilize the provisions of Subpart B, Program Grants, of Part 35 of this chapter, which require yearly evaluations of the manner in which grantees use Federal monies, to assure that an adequate evaluation of each

[1] Part 51 is entitled, "Requirements for Preparation, Adoption, and Submittal of Implementation Plans." Part 58 is entitled, "Ambient Air Quality Surveillance."

State's performance in implementing and enforcing the Act is performed.

(b) Within 60 days after comment is due from each State grantee on the evaluation report required by § 35.538 of this chapter, the Regional Administrator shall incorporate or include any comments, as appropriate, and publish notice of availability of the evaluation report in the **Federal Register.**

Tab B—Estimated Resource Demand

Regional Consistency Regulations—Estimated Resource Demand

A summary of the Estimated Resource Demand appears in Table 1.

A. One Time Expenses

Task: Revise Policy and Guidance Dissemination System

OANR would accomplish this task through in-house work. EPA work effort in revising the system is estimated to be about 0.4 work-years over the first year for OANR. In addition, OE and OGC are expected to require about 0.4 work-years each. Thus, the total estimate is 1.2 work-years.

B. Annual Expenses

1. Task: Develop Mechanisms for Ensuring Fairness and Uniformity in New Regulations, Policy, Etc.

Mechanisms will be developed only for Parts 51 and 58. Although the amount of new effort spent in incorporating mechanisms for these subparts may be small, more coordination with Regional Offices and State agencies will be needed in developing new regulations. This greater coordination is estimated to cost about 0.25 work-years of effort annually.

2. Task: Regional Office Compliance With Mechanisms

Regional Offices already generally follow Headquarters' guidance, so this task would not add any new burden.

3. Task: Annual State Agency Performance Evaluations

Each Regional Office currently performs an annual State Agency Performance Evaluation. This regulation adds two additional requirements to the performance evaluation. First, the comments from the grantee on the evaluation report must be incorporated into the evaluation report. Second, the public must be notified of the availability of the report through a notice in the **Federal Register**. It is estimated that each Region will require about 0.15 work-years to perform these tasks or a total of 1.5 work-years.

4. Task: Maintain Policy and Guidance Dissemination System

This task would require one group to coordinate the implementation of the system. Other groups would have to update the system by providing new material. This task is estimated to cost about 0.25 work-years annually for OANR. In addition, OE is expected to require about 0.25 work-years and OGC 0.15 work-years for a combined effort of 0.65 work-years.

Table 1.—*Regional Consistency Regulations*

[Estimated resource demand on EPA]

Task	Years after promulgation	
	1	2
A. One Time Expense (Work-Years)		
1. Revise guidance dissemination system	1.20	
Rounded total (all EPA)	1.20	
B. Annual Expenses (Work-Years)		
1. Develop mechanisms for ensuring fairness and uniformity in new regulations policy, etc	0.25	0.25
2. Regional Office compliance with mechanisms		0
3. Annual State Agency Performance Evaluations		1.5
4. Maintain policy and guidance system		0.65
Rounded total (all EPA)	0.25	2.40

Tab C—Evaluation Plan

Plan to Evaluate the Effectiveness of Regional Consistency Regulations

Introduction.

The Regional Consistency regulations are intended to promote fair and uniform application of EPA rules and regulations by EPA Regional Offices and assure that States adhere to the requirements of the Clean Air Act. The regulations require the following:

1. Incorporation of mechanisms for fairness and uniformity into significant SIP related rules or regulations that implement the requirements of the Clean Air Act.

2. Regions must follow these mechanisms and consult with the appropriate EPA Headquarters' office on significant interpretations of the Act, regulations, or program directives.

3. Dissemination of policy and guidance through a compilation of all relevant EPA program policy issuances.

4. Audits of States and local air agencies through the existing 105 grant audit mechanism.

The 105 grant audits should help EPA determine how well the provisions are followed and also help determine the adequacy of the basic mechanisms themselves. However, it is still necessary to evaluate the overall effectiveness of the program in order to comply with Section 2(d)(8) of Executive Order 12044. This order requires that each new significant regulation have a plan for evaluation of its effectiveness.

Procedure for Evaluation of Regional Consistency Regulations

1. It is anticipated that the first 105 grant audit report under 40 CFR 35 will be completed approximately 1 year from promulgation of the Regional Consistency regulations. The guidance dissemination systems should also be completed about a year after promulgation of these regulations. Thus, approximately one year after notice of availability of 105 grant audit reports, EPA will place a notice in the **Federal Register** soliciting public comment on implementation of the Regional Consistency regulation. The public and States will be asked to comment on and to suggest how the regulations could be improved by addressing such questions as the following:

a. Are there areas not covered by the 105 grant audit that should be?

b. Are the mechanisms for assuring fairness and uniformity in application of rules and regulations effective?

c. Are the State regulations and EPA policy guidance implemented in a timely manner?

d. Are States adhering to the requirements of the Clean Air Act in implementing and enforcing its provisions?

e. Is EPA guidance disseminated in a timely manner to all appropriate users?

2. The **Federal Register** notice will inform the public where copies of the grant audit reports, guidance documents, and other actions are available for public review. It will also summarize EPA action on the Regional Consistency regulations.

4. The public comment period will last 60 days.

5. Within 120 days of the end of the public comment period, EPA will prepare a report which summarizes the public comments and discusses possible changes to the Regional Consistency regulations as a result of such comments.

6. Subsequent notices will be published in the **Federal Register** at five year intervals.

Estimated Resource Demand

A summary of the estimated resource demand appears in Table 1. These are one-time expenses.

1. *Task: Prepare Federal Register notice requesting public comment.* This action involves coordination within Headquarters and Regional Offices to identify for the public the location of

various grant audit reports and guidance documents. With this and related information the **Federal Register** notice requesting public comment will be prepared. It is anticipated that the first grant audits will be completed approximately 1 year from promulgation of the Regional Consistency regulations. Allowing the public another year to evaluate the impact of the regulations on regional consistency means that the notice requesting public comments would appear about 2 years after the regulations are promulgated. The task would be repeated at 5 year intervals thereafter. The initial notice should require approximately 2 work-months. Subsequent notices would require about 3 work-months each to prepare because of the increased number of regulations covered by the consistency regulations.

2. *Task: Evaluate comments on Regional Consistency regulations and publish findings.* This task would require from 2–3 work-months depending on the number of regulations covered under Regional Consistency provisions and the number of public comments received. The evaluation 5 years hence would require from 3–4 work-months because of the increased number of regulations covered by the consistency regulations.

Table 1.—Development of Evaluation Plan—Regional Consistency Regulations

One-Time Expenses (Work-Years)

Task	Years After Promulgation	
	2	7
1. Prepare FEDERAL REGISTER notice requesting public comment	0.2	0.3
2. Evaluate comments on Regional Consistency regulations and publish findings in the FEDERAL REGISTER	0.2–0.3	0.3–0.4

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federal register

Wednesday
December 24, 1980

Part X

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Automobile and Light-Duty Truck Surface Coating Operations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 1627-8]

Standards of Performance for New Stationary Sources; Automobile and Light-Duty Truck Surface Coating Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes standards of performance to limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed automobile and light-duty truck surface coating operations within assembly plants. The standards were proposed and published in the **Federal Register** on October 5, 1979.

The standards implement the Clean Air Act and are based on the Administrator's determination that automobile and light-duty truck surface coating operations within assembly plants contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intent is to require new, modified, and reconstructed automobile and light-duty truck surface coating operations to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental and energy impacts.

EFFECTIVE DATE: December 24, 1980.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard is available *only* by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The Background Information Document (BID) for the final standards may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Automobile and Light-Duty Truck Surface Coating Operations—Background Information for Promulgated Standards" (EPA–450/3–79–030b).

Docket. The Docket, number A–79–05, containing supporting information used in developing the promulgated standards is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday at the EPA's Central Docket Section, West Tower, Lobby Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Smith, Chief, Standards Preparation Section (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5421.

SUPPLEMENTARY INFORMATION:

The Standards

The promulgated standards apply to new, modified, or reconstructed automobile and light-duty truck surface coating operations for which construction is commenced after October 5, 1979. The standards apply to each prime coat operation, each guide coat operation, and each topcoat operation within an assembly plant where components of an automobile or light-duty truck body are coated. Operations used to coat plastic body parts and all-plastic bodies on separate coating lines are not covered. However, operations which coat all-metal bodies or metal bodies with plastic body parts attached before coating are covered by the standards. Emissions of VOC from affected facilities are limited as follows: 0.16 kilograms of VOC per liter of applied coating solids from prime coat operations, 1.40 kilograms of VOC per liter of applied coating solids from guide coat operations, 1.47 kilograms of VOC per liter of applied coating solids from topcoat operations.

Although the emission limits are based on the use of waterborne coating materials in each coating operation, they can also be met with solvent-borne coating materials through the use of other control techniques such as incineration.

Annual model changeovers or switches to larger cars and changes in the application of coatings to increase film thickness are not covered as modifications under § 60.14.

The owner or operator is required to conduct a performance test each calendar month and report the results to EPA within ten days of the end of any month in which the affected facility is not in compliance with the standards. The calculation of the volume weighted average mass of VOC per volume of applied coating solids during each calendar month constitutes a performance test. While Method 24 is the reference method for use in this performance test to determine data used in the calculation of the volatile content of coatings, provisions have been made to allow the use of coatings manufacturers' formulation data to determine the volume fraction of solids.

In addition to the non-compliance report, the owner or operator of an affected facility who utilizes incineration to comply with the standards must submit reports quarterly on incinerator performance.

Environmental, Energy, and Economic Impacts

Environmental, energy, and economic impacts of standards of performance are normally expressed as incremental differences between the impacts from a facility complying with the standards and those for one complying with the emission standards in a typical State Implementation Plan (SIP). In the case of automobile and light-duty truck surface coating operations, the incremental differences will depend on the control levels that will be required by revised SIPs. Revisions to most SIPs are currently in progress.

Most existing automobile and light-duty truck surface coating operations are located in areas which are considered nonattainment areas for purposes of achieving the National Ambient Air Quality Standard (NAAQS) for ozone. New facilities are expected to locate in similar areas. States are in the process of revising their SIPs for these areas and are expected to include revised emission limitations for automobile and light-duty truck surface coating operations in their new SIPs. In revising their SIPs, the States are relying on the control techniques guideline document, "Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coil, Paper, Fabrics, Automobiles and Light-Duty Trucks" (EPA–450/2–77–008 [CTG]).

Since control technique guidelines are not binding, States may establish emission limits which differ from the guidelines. To the extent States adopt the emission limits recommended in the control techniques guideline document as the basis for their revised SIPs, the promulgated standards will have little environmental, energy, or economic impacts. The actual incremental impacts of the promulgated standards will be determined by the final emission limitations adopted by the States in their revised SIPs. For the purpose of this rulemaking, however, the environmental, energy, and economic impacts of the standards have been

estimated based on emission limits contained in existing SIPs at the end of 1978 when development of background information for the standards began.

In addition to achieving further reductions in emissions beyond those required by a typical SIP, standards of performance have other benefits. They establish a degree of national uniformity to avoid situations in which some States may attract industries by relaxing air pollution standards relative to other States. Further, standards of performance improve the efficiency of a case-by-case determination of best available control technology (BACT) for operations located in attainment areas and lowest achievable emission rates (LAER) for operations located in nonattainment areas by providing a reference document for use in these determinations. The reason is that the process for developing standards of performance involves a comprehensive analysis of alternative emission control technologies and an evaluation and verification of emission test methods. Detailed cost and economic analyses of various regulatory alternatives are presented in the supporting documents for the standards of performance.

The regulatory alternatives and the environmental, energy, and economic impacts of the standards of performance were originally presented in "Automobile and Light-Duty Truck Surface Coating Operations—Background Information for Proposed Standards" (EPA–450/3–79–030) and remain unchanged since proposal.

The standards of performance will reduce emissions of VOC from new, modified, or reconstructed automobile and light-duty truck surface coating operations by about 80 percent, compared to operations controlled to levels contained in SIPs existing at the end of 1978. National emissions of VOC will be reduced by about 4,800 megagrams per year by 1983 based on the projection that four new assembly plants are planned by that year.

Water pollution impacts of the standards will be relatively small compared to the volume and quality of the wastewater discharged from plants meeting 1978 SIP levels. The standards are based on the use of waterborne coating materials. These materials will lead to a slight increase in the chemical oxygen demand (COD) of the wastewater discharged from the surface coating operations within assembly plants. This increase in COD, however, is not great enough to require additional wastewater treatment capacity beyond that required in existing assembly plants using solvent-borne surface coating materials.

The solid waste impact of the promulgated standards will be negligible compared to the amount of solid waste generated by existing assembly plants. The solid waste generated by waterborne coatings, however, is very sticky and equipment cleanup is more time-consuming than for solvent-borne coatings. Solid wastes from waterborne coatings will not present any special disposal problems since they can be disposed of by conventional landfill procedures.

National energy consumption will be increased by the use of waterborne coatings to comply with the standards. The equivalent of an additional 18,000 barrels of fuel oil will be consumed per year at a typical assembly plant. This is an increase of about 25 percent in the energy consumption of a typical automobile surface coating operation. National energy consumption will be increased by the equivalent of about 72,000 barrels of fuel oil per year in 1983. This increase is based on the projection that four new assembly plants will be built by 1983. The impacts presented here are based on the use of waterborne coatings which will require extensive air conditioning in the affected facilities to meet temperature and humidity requirements. High solids coatings, while promising, are not yet adequately demonstrated to be used as the basis of the standards. However, to the extent new facilities comply with the standards through the use of higher solids content coatings, improved transfer efficiencies, and the use of incineration, with heat recovery, the energy impacts will be less than presented here.

The standards will increase the capital and annualized costs of new automobile and light-duty truck surface coating operations within assembly plants. Capital costs for the four new assembly plants planned by 1983 will be increased by approximately $19 million as a result of the standards. These incremental costs represent about 0.2 percent of the $10 billion planned for all capital expenditures. The corresponding annualized costs will be increased by approximately $9 million in 1983. The price of an automobile or light-duty truck will be increased by less than 0.1 percent when spread over the manufacturer's entire production. The Administrator considers this increase a reasonable control cost.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** of meetings of the National Air Pollution Control Techniques Advisory Committee to discuss the standards recommended for proposal. These meetings occurred on September 27 and 28, 1977. The meetings were open to the public and each attendee was given ample opportunity to comment on the standards recommended for proposal. The standards were proposed in the **Federal Register** on October 5, 1979. Public comments were solicited at that time and copies of the Background Information Document (BID) were distributed to interested parties. The public comment period extended from October 5, 1979, to December 14, 1979, with a public hearing on November 9, 1979.

In addition to five presentations at the public hearing, seventeen comment letters were received on the proposed standards of performance and on the two proposed reference methods, Methods 24 and 25, which were promulgated on October 3, 1980 (45 FR 65956). These comments have been carefully considered and, where determined to be appropriate, changes have been made.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from automobile and light-duty truck manufacturers, coatings manufacturers, trade and professional associations, State air pollution control agencies, and Federal agencies. While a number of changes were made in the standards since proposal, the affected facilities, control techniques on which the standards are based, and the impacts remain as presented in the BID for the proposed standards. Detailed discussions of these comments can be found in the BID for the promulgated standards. The major comments have been combined into the following areas: General, Emission Control Technology, Economic Impacts, Legal Considerations, and Reference Methods and Monitoring.

General

The proposed standards exempted certain specific changes which may occur in an existing facility from being considered a modification. One commenter requested that "Engineering Design Changes" be added to the list of exemptions to provide for those minor changes made during the model year to improve quality or performance of the finished product.

No changes were made in the standards as a result of this comment. While requested, data were not received defining the term "Engineering Design Changes." EPA, therefore, re-examined the available data. Under § 60.397, changes in the application of coatings to

increase coating film thickness are already exempted. In addition, minor operational changes which could include design changes are allowed as long as emissions are not increased. Therefore, EPA has concluded that sufficient relief is already provided in the standards and "engineering design changes" will not specifically be exempted.

Similarly, changes made to comply with SIP requirements were requested by one commenter to be added to the list of exemptions.

Changes to an existing facility made to comply with a SIP should reduce emissions rather than increase them. Therefore, it also would not be considered a modification. If a SIP-required change is significant enough to be considered as a reconstruction in accordance with provisions of § 60.15, the standards would apply only if it is determined to be technically and economically feasible.

One commenter stated that the transfer efficiency for waterborne air atomized spray was measured to be 36 percent instead of 40 percent at a new plant and that this value should be used as the basis for the standards.

At the time the standards were proposed, the volume of coating material required for line purging during color changes in a topcoat operation was not considered to have a significant impact on transfer efficiency. Recent tests conducted by the commenter and submitted in support of his position have indicated that line purging does have an impact. However, the same tests also indicated the technology is available to control this source of VOC emission by collecting the purge material or by incorporating design and operational changes to the spray system, thereby increasing transfer efficiency. After evaluating and discussing these data with the commenter, EPA agrees that changes to the proposed standards should be made. The baseline transfer efficiency for air atomized spray systems for waterborne coatings without purge after each vehicle on which the emission limits for guide coat operations were established has been changed from 40 percent to 39 percent. The corresponding baseline transfer efficiency for air atomized spray systems for waterborne coatings with partial purge and partial purge capture on which the emission limits for topcoat operations were established has been changed from 40 to 37 percent. As a result, the emission limits have been changed to 1.40 kilograms of VOC per liter of applied coating solids from guide coat operations, and 1.47 kilograms of VOC per liter of applied coating solids from topcoat operations.

In addition to the changes in the emission limitations, changes were made to the table of transfer efficiencies in § 60.393. Separate transfer efficiencies have been established for waterborne and solvent-borne air atomized spray systems since data indicate that higher transfer efficiencies can be realized with solvent-borne coatings. Also, because of the significance of line purging, separate tables of transfer efficiencies are now established for systems which collect 100 percent of the purge material and for systems which purge after each vehicle and do not collect any of the purge material. Provisions have also been made to allow the use of appropriate transfer efficiencies for systems which employ partial purge capture.

A number of commenters requested that the standards allow an exemption for special paints and colors which may be used in relatively small volumes because an arithmetic average of all coatings as required in the proposed standards could result in values greatly different than a volume weighted average.

The proposed standards required that an arithmetic average VOC content of all topcoat materials be used in determining emissions. This form of averaging was originally believed to provide a simple and reasonably accurate approximation of the volume weighted average VOC content of the coating materials actually used. However, for many of the new paint systems, a small percentage of the colors accounts for a large percentage of the paint used. Therefore, the arithmetic average can be significantly different from the weighted average. The promulgated standards require that compliance be demonstrated by a performance test which involves the calculation of the volume weighted average mass of VOC per volume of applied coating solids for each calendar month. While this does not exempt special paints and colors, it does allow their use in small volumes with an equitable impact on the overall average, and therefore the concerns of the commenters have been addressed.

Comments were received which requested that the coating of plastic car bodies and plastic components used on metal car bodies be excluded from the standards. Data provided by the commenter indicated significant problems associated with the use of surface coatings designed for sheet metal on plastic bodies or plastic body components. These include the increased incidence of ruptures and delaminations in the plastic substrate with the increased temperatures required to cure waterborne coatings. Similarly, the increased temperatures associated with waterborne coatings may cause defects in the materials used to join plastic body components.

The objections raised by the commenter were judged reasonable. Since current industry practice is to coat temperature sensitive plastic bodies and body components on separate lines, the standards have been changed to exclude those operations. However, plastic body components that are attached to the metal body before it is coated do not cause the coating operation of that body to be excluded.

Emission Control Technology

Two commenters objected to the weighted average method of determining the VOC content of prime coat material because of problems they anticipate with "flow control" additives. Flow control additives are added to an electrodeposition (EDP) tank to maintain or improve the application process and are added on a periodic basis. The commenters claim that flow control additives should not be included when determining the mass of VOC per volume of applied coating solids because flow control additives are not added on a continuous basis. The commenters contended that determinations of VOC when flow control additives are added will differ greatly from periods when flow control additives are not added.

The prime coat emission limit is based on a volume of solids weighted average VOC content of all makeup material including flow control additives added to an EDP tank during one calendar month. Flow control additives are high in VOC content but are added only periodically as stated by the commenter. If a short time period (such as daily) were used to calculate VOC emissions, the effect of flow control additions could be significant, causing wide daily fluctuations. A longer averaging period dampens these fluctuations. Information supplied to EPA during the development of these standards indicates that makeup material including flow control additives is available to meet an emission limit of 0.16 kilograms of VOC per liter of applied coating solids when averaged over a calendar month. Therefore, a monthly averaging period and the proposed value, including flow control additives, are appropriate.

Several commenters objected to the prime coat emission limit, which is equivalent to 1.2 pounds of VOC per gallon of coating minus water, claiming that such prime coat material is not available.

As indicated above, data from one automobile manufacturer indicates that prime coat material including flow control additives is available and operating experience demonstrates that the emission limit established for prime coat operations is achievable. Therefore, the emission limit will not be changed.

Economic Impacts

Two commenters recommended that separate standards be established for modified or reconstructed plants due to the differences in economic impacts.

If a physical or operational change were made to an existing facility at an automobile or light-duty truck plant which would potentially increase VOC emissions, the owner or operator could implement changes necessary to hold VOC emissions at or below the previous level so as not to be subject to the promulgated standards. This course of action would be less costly to the plant than implementing control strategies to meet the promulgated new source performance standards. This reduction in emissions could be accomplished by switching to a lower VOC content coating or by incineration of a portion of the VOC emission stream. Both of these options are available to all plants and are reasonable.

Although it is unlikely to happen, if an existing facility is modified and is required to meet the limits of the NSPS, the cost of implementing control strategies to meet the standards would be more costly but would still be affordable. Some existing plants may not be able to use the full range of control options because of physical constraints. For example, an existing enamel plant may not have enough room in its existing spray booths to use waterborne coatings. The enamel booths are shorter than the ones required for waterborne coatings. Nevertheless, the enamel plant has other options such as use of higher solids enamels and incineration which would be available to all such plants.

Control options that are affordable are available to all existing plants to reduce emissions to pre-modification levels or to meet the levels of the promulgated standards; therefore, the development of separate standards for modifications is not justified.

Under § 60.15 if physical or operational changes were made to an existing plant and the fixed capital cost of the new components exceeded 50 percent of the fixed capital cost that would be required to construct a comparable new facility, and it is technologically and economically feasible to meet the standards, the changes would qualify as a reconstruction. During development of the standards, EPA found that the capital cost of a new coating facility is approximately $30,000,000 (average of solvent-borne enamel and lacquer systems) and that the capital cost of implementing the standards is approximately $750,000 for that facility. In the extreme situation under reconstruction where the cost of a reconstructed facility would be $15,000,000, or 50 percent of the cost of a new facility, the cost of implementing the standards would still be $750,000 or 0.5 percent of the capital cost of the facility. The Administrator believes that this cost is not unreasonable and that relief is provided for a source in unusual financial stiuations through § 60.15 which requires that it be economically feasible for a reconstructed source to meet the applicable standards. Therefore, separate standards for reconstructed plants are not justified. The promulgated standards will apply to modified and reconstructed facilities as well as new facilities.

Legal Considerations

One commenter suggested that EPA should develop criteria to identify innovative control technologies for which "innovative waivers" may be granted.

On October 31, 1979, the White House issued a fact sheet on the President's Industrial Innovation Initiatives. Included in this fact sheet is a directive for the EPA Administrator to develop and publicize a clear implementation policy and set of criteria for the award of "innovative waivers" and to "assess the need for further regulatory authority." EPA is committed to carrying out this directive, and therefore the Administrator has requested that the Office of Enforcement initiate an implementation policy regarding the award of innovative technology waivers.

EPA will consider, but is not committed to, the commenter's request for specific innovative control technology criteria or procedures for issuing waivers for automobile and light-duty truck surface coating operations; EPA's decision will, in part, depend upon the outcome of the development of general criteria for innovative technology waivers.

Until the innovative control technology criterial are issued, EPA will continue to handle Section 111(j) waiver requests on a case-by-case basis.

Reference Methods and Monitoring

The two reference methods, Methods 24 and 25, were proposed along with the proposed standards for automobile and light-duty truck surface coating operations. Subsequently, these methods have been promulgated separately from these standards on Oct. 3, 1980 (45 FR 65956).

A revised version of the proposed Method 24 (Candidate 2) has been promulgated as the method to determine data used in the calculation of the VOC content of coatings. Procedures have been added to Method 24 to ensure that analytical data fall within established precision limits. In addition, the laboratory procedure for determining volume fraction of solids has been eliminated. Method 24 now requires volume fraction of solids be calculated from the coatings manufacturers' formulation data.

Changes to Method 25 include the new requirement of a performance test prior to use of analytical equipment. In addition, routine daily calibrations have been modified to be less time-consuming. Finally, minimum performance specifications for components of analytical equipment have been specified.

The detailed comments and responses regarding Methods 24 and 25 are presented in "Reference Methods 24 and 25—Background Information for Promulgated Test Methods" (EPA–450/3–79–030c).

In addition, one commenter recommended that Method 2 should not be specifically required and that a manifold system should be permitted for mixing and collecting a combined sample for multiple stacks in lieu of sampling each stack separately.

Method 2 requires that the volumetric flow rate be measured at the traverse points specified by Method 1. For new sources, provisions can be made during the design stage to allow for the proper location of the sampling ports which would be required. For reconstructed or modified sources where the standards may be applicable, the owner or operator can install stack extensions or use an increased number of traverse points as specified in Method 1. Therefore, the requirement to use Method 2 to measure the volumetric flow rate is reasonable and will not be changed.

In principle, a manifold system is acceptable. However, since many details are involved in designing an acceptable manifold system, approval of such a sampling technique will be made if the owner or operator can show to the Administrator's satisfaction that the use of a manifold system yields results comparable to those obtained by testing all stacks.

Several commenters stated opposition to the requirement dealing with the

monitoring of incinerators which are used to control VOC emissions. These commenters stated that the required accuracy of the temperature monitoring device (±2°C or ±3.5°F) was too restrictive.

Data solicited by EPA from incinerator and temperature monitor vendors confirm that at the high temperatures 760–820°C (1400–1500°F) at which these incinerators operate, the required accuracy was too restrictive. As a result, it has been changed to the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5°C (±4°F).

Reports Impact Analysis

A reports impact analysis for the automobile and light-duty truck surface coating operations standards was prepared in implementation of Executive Order 12044 (44 FR 30988, May 29, 1979). The purpose of the analysis is to estimate the economic impact of the reporting and recordkeeping requirements that would be imposed by the promulgated standards and by those appearing in the General Provisions of 430 CFR Part 60. The standards would require the preparation of three types of reports. First, the General Provisions (Subpart A of 40 CFR 60) would require notification reports which inform the Agency of facilities subject to new source performance standards (NSPS). These reports include notification of construction, anticipated start-up, actual start-up, and physical or operational changes. Second, reports of the results of the performance test performed each calendar month would be required for those months when the affected facility is not in compliance with the standards. Third, quarterly reports from the owner or operator of a facility using incineration devices to comply with the standard would be required for periods when incinerator temperature falls below that measured during the incinerator's most recent performance test. These reports will show whether these devices are being properly operated and maintained.

The respondent group to the reporting requirements of the standards would be the automobile and light-duty truck manufacturing industry. It is estimated that through the fifth year of standards applicability, approximately four new, modified, or reconstructed assembly plants will have been established which would have to comply with the reporting requirements of the standards. To implement the reporting requirements of the standards through the first five years of applicability the automobile and light-duty truck manufacturing industry would incur a manpower demand of about six man-years.

A copy of the Reports Impact Analysis is included in subcategory IV–J of the automobile and light-duty truck surface coating operations docket A–79–05.

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purpose of the promulgated rule and EPA responses to comments, the contents of the docket will serve as the record in case of judicial review. [Section 307 (d)(a)].

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for automobile and light-duty truck surface coating operations was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. Comments were requested specifically on Method 24 (Candidate 1 and Candidate 2) and on the coating material used as the basis for the prime coat emission limit.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

Although emission control technology may be available that can reduce emission below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance because of costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act, may require the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" (LAER) for new or modified sources locating in nonattainment areas (i.e., those areas where statutorily mandated health and welfare standards are being violated). In this respect, Section 173 of the Act requires that new or modified sources constructed in an area which exceeds the NAAQS must reduce emissions to the level which reflects the LAER, as defined in Section 171(3). The statute defines LAER as the rate of emissions based on the following, whichever is more stringent:

> (A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
>
> (B) the most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard.

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act. These provisions require that certain sources employ BACT as defined in Section 169(3) for all pollutants regulated under the Act. BACT must be determined on a case-by-case basis, taking energy, environmental, and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all cases, SIPs approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIPs must, in some cases, require greater emission reduction than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111, and prospective owners and operators of new sources should be

aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed standards and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that the promulgated standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the BID for the proposed standards.

Dated: December 17, 1980.

Douglas M. Costle,

Administrator

40 CFR Part 60 is amended as follows:

1. By adding a definition of the term "volatile organic compound" to § 60.2 of Subpart A—General Provisions as follows:

§ 60.2 Definitions

"Volatile Organic Compound" means any organic compound which participates in atmospheric photochemical reactions; or which is measured by a reference method, an equivalent method, an alternative method, or which is determined by procedures specified under any subpart.

2. By adding Subpart MM as follows:

Subpart MM—Standards of Performance for Automobile and Light-Duty Truck Surface Coating Operations

Sec.

Authority.—Sections 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart MM—Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations

§ 60.390 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to the following affected facilities in an automobile or light-duty truck assembly plant: each prime coat operation, each guide coat operation, and each topcoat operation.

(b) Exempted from the provisions of this subpart are operations used to coat plastic body components or all-plastic automobile or light-duty truck bodies on separate coating lines. The attachment of plastic body parts to a metal body before the body is coated does not cause the metal body coating operation to be exempted.

(c) The provisions of this subpart apply to any affected facility identified in paragraph (a) of this section that begins construction, reconstruction, or modification after October 5, 1979.

§ 60.391 Definitions.

(a) All terms used in this subpart that are not defined below have the meaning given to them in the Act and in Subpart A of this part.

"Applied coating solids" means the volume of dried or cured coating solids which is deposited and remains on the surface of the automobile or light-duty truck body.

"Automobile" means a motor vehicle capable of carrying no more than 12 passengers.

"Automobile and light-duty truck body" means the exterior surface of an automobile or light-duty truck including hoods, fenders, cargo boxes, doors, and grill opening panels.

"Bake oven" means a device that uses heat to dry or cure coatings.

"Electrodeposition (EDP)" means a method of applying a prime coat by which the automobile or light-duty truck body is submerged in a tank filled with coating material and an electrical field is used to effect the deposition of the coating material on the body.

"Electrostatic spray application" means a spray application method that uses an electrical potential to increase the transfer efficiency of the coating solids. Electrostatic spray application can be used for prime coat, guide coat, or topcoat operations.

"Flash-off area" means the structure on automobile and light-duty truck assembly lines between the coating application system (dip tank or spray booth) and the bake oven.

"Guide coat operation" means the guide coat spray booth, flash-off area and bake oven(s) which are used to apply and dry or cure a surface coating between the prime coat and topcoat operation on the components of automobile and light-duty truck bodies.

"Light-duty truck" means any motor vehicle rated at 3,850 kilograms gross vehicle weight or less, designed mainly to transport property.

"Plastic body" means an automobile or light-duty truck body constructed of synthetic organic material.

"Plastic body component" means any component of an automobile or light-duty truck exterior surface constructed of synthetic organic material.

"Prime coat operation" means the prime coat spray booth or dip tank, flash-off area, and bake oven(s) which are used to apply and dry or cure the initial coating on components of automobile or light-duty truck bodies.

"Purge" or "line purge" means the coating material expelled from the spray system when clearing it.

"Solvent-borne" means a coating which contains five percent or less water by weight in its volatile fraction.

"Spray application" means a method of applying coatings by atomizing the coating material and directing the atomized material toward the part to be coated. Spray applications can be used for prime coat, guide coat, and topcoat operations.

"Spray booth" means a structure housing automatic or manual spray application equipment where prime coat, guide coat, or topcoat is applied to components of automobile or light-duty truck bodies.

"Surface coating operation" means any prime coat, guide coat, or topcoat operation on an automobile or light-duty truck surface coating line.

"Topcoat operation" means the topcoat spray booth, flash-off area, and bake oven(s) which are used to apply and dry or cure the final coating(s) on components of automobile and light-duty truck bodies.

"Transfer efficiency" means the ratio of the amount of coating solids transferred onto the surface of a part or product to the total amount of coating solids used.

"VOC content" means all volatile organic compounds that are in a coating expressed as kilograms of VOC per liter of coating solids.

"Waterborne" or "water reducible" means a coating which contains more than five weight percent water in its volatile fraction.

(b) The nomenclature used in this subpart has the following meanings:

C_{aj} = concentration of VOC (as carbon) in the effluent gas flowing through stack (j) leaving the control device (parts per million by volume),

C_{bi} = concentration of VOC (as carbon) in the effluent gas flowing through stack (i) entering the control device (parts per million by volume),

C_{ok} = concentration of VOC (as carbon) in the effluent gas flowing through exhaust stack (k) not entering the control device (parts per million by volume),

D_{ci} = density of each coating (i) as received (kilograms per liter),

D_{dj} = density of each type VOC dilution solvent (j) added to the coatings, as received (kilograms per liter),

D_r = density of VOC recovered from an affected facility (kilograms per liter),

E = VOC destruction efficiency of the control device,

F = fraction of total VOC which is emitted by an affected facility that enters the control device,

G = volume weighted average mass of VOC per volume of applied solids (kilograms per liter),

L_{ci} = volume of each coating (i) consumed, as received (liters),

L_{ci}' = volume of each coating (i) consumed by each application method (l), as received liters),

L_{dj} = volume of each type VOC dilution solvent (j) added to the coatings, as received (liters),

L_r = volume of VOC recovered from an affected facility (liters),

L_s = volume of solids in coatings consumed (liters),

M_d = total mass of VOC in dilution solvent (kilograms),

M_o = total mass of VOC in coatings as received (kilograms),

M_r = total mass of VOC recovered from an affected facility (kilograms),

N = volume weighted average mass of VOC per volume of applied coating solids after the control device

$$\left(\frac{\text{kilograms of VOC}}{\text{liter of applied solids}}\right),$$

Q_{aj} = volumetric flow rate of the effluent gas flowing through stack (j) leaving the control device (dry standard cubic meters per hour),

Q_{bi} = volumetric flow rate of the effluent gas flowing through stack (i) entering the control device (dry standard cubic meters per hour),

Q_{ok} = volumetric flow rate of the effluent gas flowing through exhaust stack (k) not entering the control device (dry standard cubic meters per hour),

T = overall transfer efficiency,

T_l = transfer efficiency for application method (l),

V_{si} = proportion of solids by volume in each coating (i) as received

$$\left(\frac{\text{liter solids}}{\text{liter coating}}\right), \text{ and}$$

W_{oi} = proportion of VOC by weight in each coating (i), as received

$$\left(\frac{\text{kilograms VOC}}{\text{kilograms coating}}\right).$$

§ 60.392 Standards for volatile organic compounds

On and after the date on which the initial performance test required by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility VOC emissions in excess of:

(a) 0.16 kilograms of VOC per liter of applied coating solids from each prime coat operation.

(b) 1.40 kilograms of VOC per liter of applied coating solids from each guide coat operation.

(c) 1.47 kilograms of VOC per liter of applied coating solids from each topcoat operation.

§ 60.393 Performance test and compliance provisions.

(a) Sections 60.8 (d) and (f) do not apply to the performance test procedures required by this section.

(b) The owner or operator of an affected facility shall conduct an initial performance test in accordance with § 60.8(a) and thereafter for each calendar month for each affected facility according to the procedures in this section.

(c) The owner or operator shall use the following procedures for determining the monthly volume weighted average mass of VOC emitted per volume of applied coating solids.

(1) The owner or operator shall use the following procedures for each affected facility which does not use a capture system and a control device to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the volume weighted average mass of VOC per volume of applied coating solids for each calendar month for each affected facility. The owner or operator shall determine the composition of the coatings by formulation data supplied by the manufacturer of the coating or from data determined by an analysis of each coating, as received, by Reference Method 24. The Administrator may require the owner or operator who uses formulation data supplied by the manufacturer of the coating to determine data used in the calculation of the VOC content of coatings by Reference Method 24 or an equivalent or alternative method. The owner or operator shall determine from company records on a monthly basis the volume of coating consumed, as received, and the mass of solvent used for thinning purposes. The volume weighted average of the total mass of VOC per volume of coating solids used each calendar month will be determined by the following procedures.

(A) Calculate the mass of VOC used in each calendar month for each affected facility by the following equation where "n" is the total number of coatings used and "m" is the total number of VOC solvents used:

$$M_o + M_d = \sum_{i=1}^{n} L_{ci} \; D_{ci} \; W_{oi} + \sum_{j=1}^{m} L_{dj} \; D_{dj}$$

[$\Sigma L_{dj} D_{dj}$ will be zero if no VOC solvent is added to the coatings, as received].

(b) Calculate the total volume of coating solids used in each calendar month for each affected facility by the following equation where "n" is the total number of coatings used:

$$L_s = \sum_{i=1}^{n} L_{ci} \; V_{si}$$

(c) Select the appropriate transfer efficiency (T) from the following tables for each surface coating operation:

Application Method	Transfer efficiency
Air Atomized Spray (waterborne coating)	0.39
Air Atomized Spray (solvent-borne coating)	0.50
Manual Electrostatic Spray	0.75
Automatic Electrostatic Spray	0.95
Electrodeposition	1.00

The values in the table above represent an overall system efficiency which includes a total capture of purge. If a spray system uses line purging after each vehicle and does not collect any of the purge material, the following table shall be used:

Application Method	Transfer efficiency
Air Atomized Spray (waterborne coating)	0.30
Air Atomized Spray (solvent-borne coating)	0.40
Manual Electrostatic Spray	0.62
Automatic Electrostatic Spray	0.75

If the owner or operator can justify to the Administrator's satisfaction that other values for transfer efficiencies are appropriate, the Administrator will approve their use on a case-by-case basis.

(*1*) When more than one application method (*l*) is used on an individual surface coating operation, the owner or operator shall perform an analysis to determine an average transfer efficiency by the following equation where "n" is the total number of coatings used and "p" is the total number of application methods:

$$T = \frac{\sum_{i=1}^{n} \sum_{\ell=1}^{p} T_\ell \, V_{si} \, L_{ci\ell}}{L_s}$$

(D) Calculate the volume weighted average mass of VOC per volume of applied coating solids (G) during each calendar month for each affected facility by the following equation:

$$G = \frac{M_o + M_d}{L_s \, T}$$

(ii) If the volume weighted average mass of VOC per volume of applied coating solids (G), calculated on a calendar month basis, is less than or equal to the applicable emission limit specified in § 60.392, the affected facility is in compliance. Each monthly calculation is a performance test for the purpose of this subpart.

(2) The owner or operator shall use the following procedures for each affected facility which uses a capture system and a control device that destroys VOC (e.g., incinerator) to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the volume weighted average mass of VOC per volume of applied coating solids (G) during each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(ii) Calculate the volume weighted average mass of VOC per volume of applied solids emitted after the control device, by the following equation: $N = G[1-FE]$

(A) Determine the fraction of total VOC which is emitted by an affected facility that enters the control device by using the following equation where "n" is the total number of stacks entering the control device and "p" is the total number of stacks not connected to the control device:

$$F = \frac{\sum_{i=1}^{n} Q_{bi} \, C_{bi}}{\sum_{1=1}^{n} Q_{bi} \, C_{bi} + \sum_{k=1}^{p} Q_{fk} \, C_{fk}}$$

If the owner can justify to the Administrator's satisfaction that another method will give comparable results, the Administrator will approve its use on a case-by-case basis.

(*1*) In subsequent months, the owner or operator shall use the most recently determined capture fraction for the performance test.

(B) Determines the destruction efficiency of the control device using values of the volumetric flow rate of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation where "n" is the total number of stacks entering the control device and "m" is the total number of stacks leaving the control device:

$$E = \frac{\sum_{i=1}^{n} Q_{bi} \, C_{bi} - \sum_{j=1}^{m} Q_{aj} \, C_{aj}}{\sum_{i=1}^{n} Q_{bi} \, C_{bi}}$$

(*1*) In subsequent months, the owner or operator shall use the most recently determined VOC destruction efficiency for the performance test.

(C) If an emission control device controls the emissions from more than one affected facility, the owner or operator shall measure the VOC concentration (C_{bi}) in the effluent gas entering the control device (in parts per million by volume) and the volumetric flow rate (Q_{bi}) of the effluent gas (in dry standard cubic meters per hour) entering the device through each stack. The destruction or removal efficiency determined using these data shall be applied to each affected facility served by the control device.

(iii) If the volume weighted average mass of VOC per volume of applied solids emitted after the control device (N) calculated on a calendar month basis is less than or equal to the applicable emission limit specified in § 60.392, the affected facility is in compliance. Each monthly calculation is a performance test for the purposes of this subpart.

(3) The owner or operator shall use the following procedures for each affected facility which uses a capture system and a control device that recovers the VOC (e.g., carbon adsorber) to comply with the applicable emission limit specified under § 60.392.

(i) Calculate the mass of VOC ($M_o + M_d$) used during each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(ii) Calculate the total volume of coating solids (L_s) used in each calendar month for each affected facility as described under § 60.393(c)(1)(i).

(iii) Calculate the mass of VOC recovered (M_r) each calendar month for each affected facility by the following equation: $M_r = L_r D_r$

(iv) Calculate the volume weighted average mass of VOC per volume of applied coating solids emitted after the control device during a calendar month by the following equation:

$$N = \frac{M_o + M_d - M_r}{L_s T}$$

(v) If the volume weighted average mass of VOC per volume of applied solids emitted after the control device (N) calculated on a calendar month basis is less than or equal to the applicable emission limit specified in § 60.392, the affected facility is in compliance. Each monthly calculation is a performance test for the purposes of this subpart.

§ 60.394 Monitoring of emissions and operations.

The owner or operator of an affected facility which uses an incinerator to comply with the emission limits specified under § 60.392 shall install, calibrate, maintain, and operate temperature measurement devices as prescribed below:

(a) Where thermal incineration is used, a temperature measurement device shall be installed in the firebox. Where catalytic incineration is used, a temperature measurement device shall be installed in the gas stream immediately before and after the catalyst bed.

(b) Each temperature measurement device shall be installed, calibrated, and maintained according to accepted practice and the manufacturer's specifications. The device shall have an accuracy of the greater of ±0.75 percent of the temperature being measured expressed in degrees Celsius or ±2.5° C.

(c) Each temperature measurement device shall be equipped with a recording device so that a permanent record is produced.

(Section 114 of the Clean Air Act as amended (42 U.S.C. 74140))

§ 60.395 Reporting and recordkeeping requirements.

(a) Each owner or operator of an affected facility shall include the data outlined in subparagraphs (1) and (2) in the initial compliance report required by § 60.8.

(1) The owner or operator shall report the volume weighted average mass of VOC per volume of applied coating solids for each affected facility.

(2) Where compliance is achieved through the use of incineration, the owner or operator shall include the following additional data in the control device initial performance test requried by § 60.8(a) or subsequent performance tests at which destruction efficiency is determined: the combustion temperature (or the gas temperature upstream and downstream of the catalyst bed), the total mass of VOC per volume of applied coating solids before and after the incinerator, capture efficiency, the destruction efficiency of the incinerator used to attain compliance with the applicable emission limit specified in § 60.392 and a description of the method used to establish the fraction of VOC captured and sent to the control device.

(b) Following the initial report, each owner or operator shall report the volume weighted average mass of VOC per volume of applied coating solids for each affected facility during each calendar month in which the affected facility is not in compliance with the applicable emission limit specified in § 60.392. This report shall be postmarked not later than ten days after the end of the calendar month that the affected facility is not in compliance. Where compliance is achieved through the use of a capture system and control device, the volume weighted average after the control device should be reported.

(c) Where compliance with § 60.392 is achieved through the use of incineration, the owner or operator shall continuously record the incinerator combustion temperature during coating operations for thermal incineration or the gas temperature upstream and downstream of the incinerator catalyst bed during coating operations for catalytic incineration. The owner or operator shall report quarterly as defined below.

(1) For thermal incinerators, every three-hour period shall be reported during which the average temperature measured is more than 28°C less than the average temperature during the most recent control device performance test at which the destruction efficiency was determined as specified under § 60.393.

(2) For catalytic incinerators, every three-hour period shall be reported during which the average temperature immediately before the catalyst bed, when the coating system is operational, is more than 28° C less than the average temperature immediately before the catalyst bed during the most recent control device performance test at which destruction efficiency was determined as specified under § 60.393. In addition, every three-hour period shall be reported each quarter during which the average temperature difference across the catalyst bed when the coating system is operational is less than 80 percent of the average temperature difference of the device during the most recent control device performance test at which destruction efficiency was determined as specified under § 60.393.

(3) For thermal and catalytic incinerators, if no such periods occur, the owner or operator shall submit a negative report.

(d) The owner or operator shall notify the Administrator 30 days in advance of any test by Reference Method 25.

(Section 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.396 Reference methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided in § 60.8 shall be used to conduct performance tests.

(1) Reference Method 24 or an equivalent or alternative method approved by the Administrator shall be used for the determination of the data used in the calculation of the VOC content of the coatings used for each affected facility. Manufacturers' formulation data is approved by the Administrator as an alternative method to Method 24. In the event of dispute, Reference Method 24 shall be the referee method.

(2) Reference Method 25 or an equivalent or alternative method approved by the Administrator shall be used for the determination of the VOC concentration in the effluent gas entering and leaving the emission control device for each stack equipped with an emission control device and in the effluent gas leaving each stack not equipped with a control device.

(3) The following methods shall be used to determine the volumetric flow rate in the effluent gas in a stack:

(i) Method 1 for sample and velocity traverses,

(ii) Method 2 for velocity and volumetric flow rate,

(iii) Method 3 for gas analysis, and

(iv) Method 4 for stack gas moisture.

(b) For Reference Method 24, the coating sample must be a 1-liter sample taken in a 1-liter container.

(c) For Reference Method 25, the sampling time for each of three runs must be at least one hour. The minimum sample volume must be 0.003 dscm except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator. The Administrator will approve the sampling of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that the testing of representative stacks would yield results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.397 Modifications.

The following physical or operational changes are not, by themselves, considered modifications of existing facilities:

(1) Changes as a result of model year changeovers or switches to larger cars.

(2) Changes in the application of the coatings to increase coating film thickness.

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Part XI

Department of Education

Library Career Training Program (Title II-B HEA)

DEPARTMENT OF EDUCATION

34 CFR Part 776

Library Career Training Program (Title II–B HEA)

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is issuing regulations for the Library Career Training Program authorized by Title II of the Higher Education Act of 1965, as amended. The regulations are being amended to reflect the statutory changes contained in the Education Amendments of 1980, incorporate the general selection criteria in the Education Division General Administrative Regulations (EDGAR), and reflect administrative policy decisions.

EFFECTIVE DATE: These final regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress several days before they are published in the **Federal Register.** The effective date is changed by statute if the Congress takes certain adjournments. If you want to know the effective date of these final regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Frank A. Stevens, U.S. Department of Education (Room 3622, ROB–3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245–9530.

SUPPLEMENTARY INFORMATION: The Library Career Training Program is authorized by Part B of Title II of the Higher Education Act, as amended by the Education Amendments of 1980, Pub. L. 96–374. Under the Library Career Training Program the Secretary makes grants or contracts to institutions of higher education and library organizations or agencies. The purpose of the program is to train persons in librarianship through institutes, fellowships and traineeships, and establish, expand, or develop programs of library and information sciences.

On November 14, 1980, the Secretary published a notice in the **Federal Register** of the Department's intent to publish regulations necessary to implement the Education Amendments of 1980. In that notice, the Department listed the existing regulations affected by the new law and requested comments whether those regulations required information that is already being gathered by or is available from any other agency or authority of the United States. The regulations in this document are based on regulations listed in the November 14 notice. Based on any comments received and the Department's own review, it has been determined that the regulations in this document do not require information that is already being gathered by or is available from any other agency or authority of the United States.

These regulations have been rewritten for brevity and clarity. In substance, however, these regulations are largely the same as their predecessor. Most of the changes are mandated by the Education Amendments of 1980.

Because of the need to make awards based on these regulations early in 1981, it is not possible to obtain public comment upon them. However, it is intended that these regulations will undergo a more thorough and exhaustive revision at a later date for implementation in FY 1982, at which time these regulations will be made available for public comment.

The most significant revisions to the regulations include:

(a) The incorporation of the standard selection criteria contained in the Education Division General Administrative Regulations (EDGAR);

(b) The addition of the Secretary's authority to enter into contracts as well as grants;

(c) An increase in the amount of stipends and institutional support;

(d) A clarification of the Secretary's authority to establish funding priorities for each fiscal year;

(e) The expansion of the program purposes to include the development of new techniques of information transfer and communication technology; and

(f) The limitation of dependency allowances to trainees on a hardship basis only.

These regulations are being codified in Title 34 of the Code of Federal Regulations along with other Department of Education programs.

CITATION OF LEGAL AUTHORITY: A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these regulations.

(20 U.S.C. 1021, 1032)

Dated: December 19, 1980.

Shirley M. Hufstedler,

Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.036, Library Career Training. Part I of OMB Circular A–95 does not apply.)

The Secretary revises Part 776 of 34 CFR to read as follows:

PART 776—LIBRARY CAREER TRAINING PROGRAM

Subpart A—General

Subpart B—Kinds of Projects for Which Grants Are Made

Subpart C—How To Apply for a Grant

Subpart D—How a Grant Is Made

Subpart E—Conditions That Must Be Met by a Grantee

Subpart F—The Administrative Responsibilities of a Grantee

Authority: Part B of Title II of the Higher Education Act of 1965, as amended by Education Amendments of 1980, 94 Stat. 1383 (20 U.S.C. 1021).

Subpart A—General

§ 776.1 Description of the Library Career Training Program.

The Secretary awards grants and contracts for the purpose of—

(a) Training persons in librarianship through institutes, fellowships, or traineeships; and

(b) Establishing, developing, and expanding programs of library and information science, including new techniques of information transfer and communication technology.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021, 1032)

§ 776.2 Eligible parties.

Eligible applicants include—

(a) An institution of higher education that has or is planning to have a graduate or undergraduate library education program; and

(b) A library organization or agency that can conduct a training project consistent with the purposes of the Act.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.3 Regulations that apply to grants.

The following regulations apply to grants under the Library Career Training Program:

(a) The Education Division General Administrative Regulations (EDGAR) 34 CFR Parts 75 and 77.

(b) The regulations in this Part 776.

(20 U.S.C. 3474)

§ 776.4 Regulations that apply to contracts.

The regulations in this part do not govern procurement contracts under the Library Career Training Program. These contracts are subject to—

(a) Federal and Department procurement regulations in 41 CFR Chapters 1 and 34; and

(b) Requirements and criteria in particular requests for proposals (RFP's) published in the Commerce Business Daily.

(20 U.S.C. 3474)

§ 776.5 Definitions that apply to the Library Career Training Program.

(a) Definitions in EDGAR. The following terms used in this part are defined in 34 CFR Part 77: Applicant, Application, Award, Contract, Department, Grant, Grantee, Local Educational Agency, Nonprofit, Private, Project, Project period, Public, Secretary, State Educational Agency.

(b) Definitions that apply to this part. The following definitions apply to this part:

"Act" means the Higher Education Act, as amended.

"Dependent" means any of the following, provided that any person to be claimed in (1), (2) or (3) has received more than half of his/her support from the participant for the calendar year in which the school year begins:

(1) any relative by blood or marriage and any in-law of the participant;

(2) any individual living in the participant's household, so long as this relationship is not in violation of local law; and

(3) any legally adopted child or a child placed in the participant's home for adoption by a licensed child-placing agency.

"Fellowship" means an award to a participant engaged in a regular, full-time academic program in an institution of higher education that enables the participant to earn an academic degree.

"Institute" means an intensive short-term or regular-session project of specialized training designed to train individuals in particular principles and practices of librarianship.

"Institution of higher education" means an educational institution in any State which—

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association or, if not so accredited—

(i) is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet the accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or

(ii) is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. Such term also includes any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (1), (2), (4), and (5). For purposes of this subsection, the Secretary shall publish a list of nationally recognized accrediting agencies or associations which the Secretary determines to be reliable authority as to the quality of training offered. Such term also includes a public or nonprofit private educational institution in any State which, in lieu of the requirement in clause (1), admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution.

"Librarianship" means the study of the principles and practices of the library and information sciences, including the acquisition, organization, storage, retrieval, and dissemination of information and reference and research use of the library and other information resources.

"Library organization or agency" means a State library agency, a State educational agency, a public library, a local educational agency, a national, State, regional or local library association, or any other public or private agency providing library service programs.

"Non-self-contained institute" is one in which not all participants are receiving Federal support under this program.

"Paraprofessional" means a person with special skills or capacities for professional work who can support or complement a professional. The term includes positions identified as library assistant, technical assistant, library technician, media technician, library aide, but excludes positions characterized as clerical, service, and custodial. The minimum educational objective for these positions is participation in a course (or courses) leading to graduation from a junior or community college (or its equivalent) in a paraprofessional library curriculum.

"Participant" means an individual enrolled in a training project assisted with Federal funds under this part.

"Self-contained institute" is one in which all participants are receiving Federal support under this program.

"State agency" means the state agency designated under section 1203 of the Act.

"Traineeship" means an award to a participant enrolled in a discrete training program that is not a regular academic program.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021, 1032)

Subpart B—Kinds of Projects for Which Grants Are Made

§ 776.10 Types of projects.

A grantee may support—

(a) An institute project which provides persons with the necessary skills to enter the library field and provides professional librarians—including library educators—an opportunity to update their competencies.

(b) A fellowship project which provides full-time study in a graduate or undergraduate level program in libary and information science. The project may result in the award of a specific degree or may provide specialized training in some aspect of librarianship.

(c) A traineeship project which provides paraprofessional and professional librarians the opportunity to work and study in a discrete training project designed to fulfill individual professional goals.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021, 1032)

§ 776.11 Program objectives.

Applicants are encouraged to design projects that further the following objectives—

(a) Increasing the opportunities of minorities or the economically disadvantaged, or both, for training in librarianship;

(b) Increasing the opportunities for upward mobility of women and minorities through the advanced degree level programs;

(c) Training librarians to work more responsively with the disadvantaged; or

(d) Developing viable alternatives to traditional library service patterns including improved use of new techniques of information transfer and communication technology.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.12 Project duration.

(a) A fellowship project must provide at least one academic year but not more than 12 months of training.

(b) A short-term institute project must provide less than one academic year of training. The usual short-term training session is 1 to 12 weeks in length.

(c) A long-term institute project must provide at least one academic year but not more than 12 months of training.

(d) A traineeship project must provide at least three months but not more than 12 months of training.

(Section 222 of the Act; 20 U.S.C. 1032)

Subpart C—How To Apply for a Grant

§ 776.20 Limitation on number of applications.

(a) The Secretary publishes a notice of closing date each fiscal year in the **Federal Register.**

(b) In response to the notice of closing date, an applicant may submit—

(1) Only one application for a fellowship project;

(2) Any number of applications for institute and traineeship projects.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.21 Application requirements.

An applicant must demonstrate, on the application form furnished by the Secretary, that the proposed project meets the requirements of the Act and applicable regulations. The applicant must address each funding criterion.

(Section 222 of the Act; 20 U.S.C. 1032)

Subpart D—How a Grant Is Made

§ 776.30 How the Secretary judges applications.

(a) The Secretary evaluates an application for an institute project on the basis of the criteria in § 776.34 and § 776.35, and awards up to 207 possible points for these criteria.

(b) The Secretary evaluates an application for a fellowship project on the basis of the criteria in § 776.34 and § 776.36, and awards up to 108 possible points for these criteria.

(c) The Secretary evaluates an application for a traineeship project on the basis of the criteria in § 776.34 and § 776.37, and awards up to 111 possible points for these criteria.

(d) The maximum possible score for each complete criterion is indicated in parentheses next to the heading of that criterion.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.31 Funding priorities—institute projects.

The Secretary may, in any fiscal year, select from the following activities and announce in the **Federal Register** those to be given priority:

(a) Recruiting minority or economically deprived persons, or both, into the library field as professionals or paraprofessionals.

(b) Training or retraining professional librarians to serve the disadvantaged, including the aged and handicapped.

(c) Training professional librarians in the use of new techniques of information transfer and communication technology.

(d) Retraining professional librarians to achieve competence in other areas of special need, selected by the Secretary.

(e) Developing new methods for recruitment, training and the use of library personnel.

(f) Training or retraining individuals to obtain or improve skills in library administration, management or supervision.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.32 Funding priorities—fellowship projects.

The Secretary may, in any fiscal year, select from the following activities and announce in the **Federal Register** those to be given priority:

(a) Two-year associate degree level projects.

(b) Bachelor's degree level projects.

(c) Master's degree level projects.

(d) Post-master's degree or certificate level projects.

(e) Doctoral degree level projects.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.33 Funding priorities—traineeship projects.

The Secretary may, in any fiscal year, select from the following activities and announce in the **Federal Register** a priority for traineeships for individuals possessing a—

(a) Master's degree.

(b) Baccalaureate degree.

(c) Associate degree.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.34 General selection criteria for evaluating applications.

(a) The Secretary uses the following general selection criteria to evaluate applications for all new grants. Special selection criteria for institute, fellowship and traineeship projects are included in §§ 776.35–37.

(b) The general selection criteria are assigned different values for institute, fellowship and traineeship projects. The maximum values for the general selection criteria for each type of project are included in §§ 776.35–37.

(1) *Plan of operation.*

(i) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(ii) The Secretary looks for information that shows—

(A) High quality in the design of the project;

(B) An effective plan of management that insures proper and efficient administration of the project;

(C) A clear description of how the objectives of the project relate to the purpose of the program;

(D) The way the applicant plans to use its resources and personnel to achieve each objective; and

(E) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(2) *Quality of key personnel.*

(i) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(ii) The Secretary looks for information that shows—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraphs (b)(9)(ii) (A) and (B) of this section plans to commit to the project; and

(D) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(*1*) Members of racial or ethnic minority groups;

(*2*) Women;

(*3*) Handicapped persons; and

(*4*) The elderly.

(iii) To determine the qualifications of a person, the Secretary considers evidence of past experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(3) *Budget and cost effectiveness.*

(i) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(ii) The Secretary looks for information that shows—

(A) The budget for the project is adequate to support the project activities; and

(B) Costs are reasonable in relation to the objectives of the project.

(4) *Evaluation plan.*

(i) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

(ii) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(5) *Adequacy of resources.*

(i) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(ii) The Secretary looks for information that shows—

(A) The facilities that the applicant plans to use are adequate; and

(B) The equipment and supplies that the applicant plans to use are adequate.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.35 Special selection criteria for evaluating institute applications.

(a) The Secretary uses the special selection criteria in this section and the general criteria in § 776.34 to evaluate institute applications.

(b) The Secretary looks for information that shows—

(1) *The extent to which the proposed project is justified. (10 points)*

(i) The project will contribute to the preparation of librarians with specialized skills.

(ii) The proposed project addresses itself to an appropriate training need.

(iii) The subject is important and timely.

(iv) The proposed project addresses itself to the chosen annual priority(ies).

(2) *The extent to which participant selection is appropriate. (10 points)*

(i) The participant selection criteria are appropriate for the type of training being offered and realistic to meet project objectives.

(ii) The proposed training project is related accurately to the experience and duties of the participant.

(iii) The proposed number of participants can be accommodated by the proposed project method.

(3) *The extent to which the proposed project will be effective. (30 points)*

(i) The subject of the proposed project is appropriate for intensive or long-range training.

(ii) There is adequate project potential for the solution of the training problem or need.

(iii) The proposed professional education is in accorance with accepted standards.

(iv) There is a satisfactory blend of the theoretical and the practical.

(v) The training approaches are new and imaginative.

(vi) Participants will be involved in innovative and creative activities.

(vii) The proposed project will maintain focus on the subject.

(4) *The extent to which the institute format is appropriate. (5 points)*

(i) The type of institute (self-contained or non-self-contained) is properly chosen.

(ii) The proposed timing is well chosen.

(iii) The length of the institute is appropriate.

(5) *The extent to which program purposes will be achieved. (30 points)*

(i) The proposed project will contribute to librarianship training.

(ii) Prospects for employment or advancement will be provided.

(iii) Training opportunities will be provided for minority groups, or economically disadvantaged persons.

(6) *The extent to which there is potential for replication. (2 points)*

There is potential for reproducing the results of the project in other projects or programs for similar educational purposes.

(7) *The extent to which there is potential for dissemination. (5 points)*

There is potential for disseminating the results of the project and for making project material available to interested parties.

(8) *Plan of operation. (40 points)*

(9) *Quality of key personnel. (25 points)*

(10) *Budget and cost effectiveness. (15 points)*

(11) *Evaluation plan. (25 points)*

(12) *Adequacy of resources. (10 points)*

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.36 Special selection criteria for evaluating fellowship applications.

(a) The Secretary uses the special selection criteria in this section and the general criteria in § 776.34 to evaluate fellowship applications.

(b) the Secretary looks for information that shows—

(1) *Adequacy of project content. (9 points)*

(i) The character and scope of the proposed project are timely, realistic, up-to-date, and well-constructed.

(ii) Contemplated changes to regular academic curriculum are well conceived.

(iii) The catalog provides sufficient information about the program.

(iv) Common course requirements meet acceptable standards.

(v) The student field experience component is sufficient.

(2) *Adequacy of project content as related to objectives. (5 points)*

The objectives can be achieved by project content.

(3) *Adequacy of qualifications for admission. (10 points)*

(i) Selection criteria for fellows are suitable and sufficient.

(ii) Applied tests are well recommended.

(iii) Scholarship requirements are adequate.

(4) *Level of institutional expenditures. (10 points)*

(i) The ratio of institutional expenditures for education in librarianship to enrollment is satisfactory.

(ii) Expenditures are comparable to other library education programs with similar curricula and student enrollment.

(5) *Quantity of enrollment and degrees awarded. (5 points)*

(i) Enrollment and the number of degrees awarded by the institution are increasing.

(ii) The ratio of the number of degrees awarded to enrollment is satisfactory.

(6) *Quantity of institutional fellowships and scholarships. (5 points)*

(i) Institutional fellowships and scholarships are increasing.

(ii) The ratio of the requested number of Title II–B fellowships to the institutionally supported number is satisfactory.

(7) *Adequacy of prospects for increasing training opportunities. (15 points)*

(i) There is evidence that the proposed project will be adequately promoted and that there will be effective recruitment.

(ii) The level of training selected is appropriate to the applicant's capabilities or experience in this field.

(8) *Prospect for achieving program objectives. (10 points)*

(i) The extent to which the proposed project will substantially further the objective of increasing the opportunities of minority group persons, or economically disadvantaged persons, or both, for training in librarianship.

(ii) The extent to which the proposed project will substantially further the objective of training librarians to work more responsively with the disadvantaged.

(iii) The extent to which the proposed project will substantially further the objective of developing viable alternatives to traditional library service patterns.

(9) *Plan of operation. (14 points)*

(10) *Quality of key personnel. (10 points)*

(11) *Budget and cost effectiveness. (5 points)*

(12) *Evaluation plan. (5 points)*

(13) *Adequacy of resources. (5 points)*

(Section 222; 20 U.S.C. 1032)

§ 776.37 Special selection criteria for evaluating traineeship applications.

(a) The Secretary uses the special selection criteria in this section and the general criteria in § 776.34 to evaluate traineeship applications.

(b) The Secretary looks for information that shows—

(1) *Opportunities for minority groups, or disadvantaged persons. (17 points)*

The extent to which the proposed project will substantially further the objectives of increasing the opportunities of minority group persons, or economically disadvantaged persons, or both, for advanced training in librarianship.

(2) *Alternatives to traditional library service. (16 points)*

The extent to which the proposed project will substantially further the objectives of training librarians to work more responsively with the disadvantaged and developing viable alternatives to traditional library service patterns.

(3) *Internship opportunities. (16 points)*

The extent to which internship opportunities are available to participants through cooperating library agencies, and the appropriateness of those internship opportunities to the project objectives.

(4) *Behavioral objectives. (16 points)*

The extent to which behavioral objectives are appropriate as related to the project objectives and the participant selection criteria.

(5) *Individualized activities. (16 points)*

The extent to which project activities and objectives are individualized.

(6) *Plan of operation. (10 points)*

(7) *Quality of key personnel. (7 points)*

(8) *Budget and cost effectiveness. (5 points)*

(9) *Evaluation plan. (5 points)*

(10) *Adequacy of resources. (3 points)*

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.38 Apportionment.

At least 50 percent of the grants awarded by the Secretary under this part are for fellowships or traineeships.

(Section 222 of the Act; 20 U.S.C. 1032)

Subpart E—Conditions That Must Be Met by a Grantee

§ 776.40 Fiscal requirements.

(a) For fellowship projects, the Secretary may pay the costs described in § 776.43 (Institutional support), § 776.44 (Stipends for participants in fellowship projects), § 776.46 (Travel allowances for project participants), and § 776.47 (Allowances for dependents of project participants).

(b) For institute projects, the Secretary may pay the cost described in § 776.45 (Stipends for participants in institute projects), § 776.46 (Travel allowances for project participants), § 776.47 (Allowances for dependents of project participants), and 34 CFR 75.530. (EDGAR—General Cost Principles)

(c) For traineeship projects, the Secretary may pay either the costs described in (a) or (b) of this section.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.41 Limitation on costs.

(a) The grantee may not charge a participant that receives Federal support under this part tuition and fees, but may charge for room and board.

(b) In the case of a non-self-contained institute, regularly enrolled students of the grantee who are admitted to the institute may not receive stipends or travel allowances from the proceeds of the grant. The grantee shall pay a proportional share of the cost of the institute based on the number of regularly enrolled students who attend the institute.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.42 Evaluation of institute and traineeship projects.

An application for an institute or traineeship project must include an evaluation plan to be carried out by a third party. The evaluation plan must describe how the applicant will—

(a) Determine the extent to which objectives of the project are being met;

(b) Determine the factors responsible for the achievement—or lack of achievement—of the objectives of the project; and

(c) Encourage the inclusion of successful aspects of the project in other educational programs.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.43 Institutional support.

(a) The Secretary pays institutional support to a grantee in conjunction with a fellowship awarded to a participant to assist in covering the cost of courses of training in librarianship.

(b) The Secretary pays institutional support based on the training level of the project:

(1) For each fellowship awarded at the undergraduate level—$1500 for an academic year and $250 for a summer session.

(2) For each fellowship awarded at the master's level—$3500 for an academic year and $500 for a summer session.

(3) For each fellowship awarded at the post-master's and doctoral level—$5200 for an academic year and $800 for a summer session.

(c) The grantee is entitled to one-half the amount of institutional support for an academic year as soon as the fellow begins his training. The grantee is entitled to the second half when the fellow, or a substitute fellow, enrolls for the following academic term.

(d) If the fellow does not attend the summer session, the grantee is not entitled to the support for the summer.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.44 Stipends for participants in fellowship projects.

The Secretary pays stipends for participants in fellowship projects based on the training level of the project:

(a) Undergraduate level—$1500 for an academic year and $250 for a summer session.

(b) Master's level—$3500 for an academic year and $500 for a summer session.

(c) Post-master's and doctoral level—$5200 for an academic year and $800 for a summer session.

§ 776.45 Stipends for participants in institute projects.

The Secretary may pay stipends for participants in institute projects depending upon the nature and objectives of the training project. Stipends are based on the length and training level of the project:

(a) Long-term, full-time, post-baccalaureate level—$3500 for an academic year and $500 for a summer session.

(b) Long-term, full-time, pre-baccalaureate level—$1,500 for an academic year and $250 for a summer session.

(b) Long-term, full-time, pre-baccalaureate level—$1,500 for an academic year and $250 for a summer session.

(c) Short-term, full-time—$100 a week. A week is defined as any consecutive seven day period.

(d) Part-time—$20 a day. A day is defined as eight hours of training.

(Section 222 of the Act; 20 U.S.C.)

§ 776.46 Travel allowances for project participants.

The Secretary may authorize upon request of the project director travel allowances for participants only—

(a) in cases of extreme hardship; and

(b) if travel is necessary for successful participation in the project. The mileage rate shall be consistent with current Federal travel regulations.

(Section 222 of the Act; U.S.C. 1032)

§ 776.47 Allowances for dependents of project participants.

The Secretary may authorize upon request of the project director allowances for the dependents of project participants in cases of extreme hardship. The amount that may be provided is $450 for each dependent for an academic year, $50 for each dependent for a summer session. In the case of short-term projects, $20 for each dependent for a week may be provided.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.48 Coordination with other groups.

Each institution of higher education that receives a grant under this part shall annually inform the State agency designated under section 1203 of the Act of its project activities.

(Section 202 of the Act; 20 U.S.C. 1022)

Subpart F—The Administrative Responsibilities of a Grantee

§ 776.50 Eligible participants.

To be enrolled as a participant in a training project and receive Federal support an individual must be a national of the United States, or be in the United States for other than a temporary purpose, and intend to become a permanent resident of the United States; and—

(a) Be engaged in, or preparing to engage in, a profession or other occupation involving librarianship—this includes library paraprofessionals;

(b) Be concerned with the study or teaching of library media or information science;

(c) Have majored in library science at the undergraduate level; or

(d) Have a graduate degree in library science.

(Sections 201 and 222 of the Act; 20 U.S.C. 1021 and 1032)

§ 776.51 Eligibility for fellowships

In addition to the requirements of § 776.50, to receive Federal support a participant in a fellowship project must—

(a) Have at least a high school diploma or its equivalent; and

(b) Have been accepted for enrollment on a full-time basis in a program of library and information science. A full-time basis means carrying a program load sufficient to allow the student to complete the course of study in the normal time period.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.52 Eligibility for traineeships.

In addition to the requirements of § 776.50, to receive Federal support a participant in a traineeship project must—

(a) Have at least a high school diploma or its equivalent, and

(b) Have been accepted for enrollment in a discrete program of study that is not a regular part of the academic program being conducted by an institution of higher education, library organizaton or agency.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.53 Selection of participants.

A grantee has the responsibility for the selection of project participants.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.54 Substitutions.

When a participant withdraws from a training project, another participant may be substituted by the grantee provided that the new participant can successfully complete the training project at no additional cost to the Government. The grantee shall notify the Department of Education in writing within 30 days of withdrawal or substitution of the participant.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.55 Payments to participants.

(a) An applicant must describe in the application the amount to be paid to participants for stipends, dependency and travel allowances. The grant includes the amount of stipends, dependency and travel allowances to be paid to the appropriate project participants.

(b) The grantee disburses the stipends, dependency and travel allowances to the appropriate project participants.

(c) If a participant fails to complete a period of training for which a stipend payment has been made, the grantee must recover the excess payment.

(d) If a substitution is not made when a participant withdraws from a training project, the grantee must refund to the Federal Government the remaining proportional share of stipends, dependency and travel allowances.

(e) A grantee may make no deductions from payments to participants except as provided in § 776.56.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.56 Payment adjustments.

(a) When a participant withdraws from a training project, the stipend and any dependency allowances the participant received must be prorated according to the number of weeks in the training period. Attendance in any part of a week is counted as a full week for the purposes of prorating a stipend.

(b) The date of withdrawal is the participant's last day of class attendance or the date the grantee determines that the participant has ceased to maintain academic proficiency.

(Section 222 of the Act; 20 U.S.C. 1032)

§ 776.57 Assistance under other Federal programs.

(a) Any amount paid a participant from any other Federal grant program for educational purposes (except

veterans' and war orphans' and widows' educational assistance under Title 38, United States Code) must be set off against the amount the participant otherwise would receive under this part.

(b) A participant may not be prevented from receiving a loan that is made, insured or reinsured under any Federal educational loan program. The amount of the loan and payment of any Federal interest may not be deducted from the amount received by the participant under this part.

(Section 222 of the Act; 20 U.S.C. 1032 and 38 U.S.C. 1700, et seq.)

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